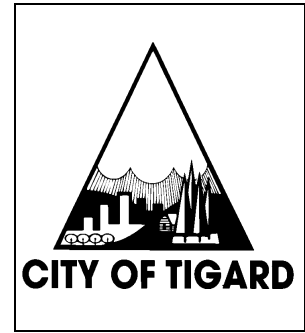

TIGARD CITY COUNCIL MEETING

September 25, 2001 6:30 p.m.

TIGARD CITY HALL
13125 SW HALL BLVD
TIGARD, OR 97223



PUBLIC NOTICE:

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Visitor's Agenda items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are estimated; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. Business agenda items can be heard in any order after 7:30 p.m.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, Ext. 309 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, x309 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

A G E N D A
TIGARD CITY COUNCIL MEETING
SEPTEMBER 25, 2001

**Commemorating
the City of Tigard's 40th Year!**

6:30 PM

1. CALL TO ORDER CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD,
ROLL CALL, AND PLEDGE OF ALLEGIANCE – MAYOR GRIFFITH

- ❖ Pledge of Allegiance to be Led by Boy Scout Troop 419

2. WELCOME & READING OF PROCLAMATION – MAYOR GRIFFITH

3. SPECIAL GUESTS

- ❖ Washington County Chair Tom Brian (Tigard Mayor – Jan. 1987 – December. 1988;
Letter to be read by Councilor Patton)
- ❖ US Representative David Wu (Letter to be read by Representative Wu's spokesperson.)
- ❖ Former Mayor John Cook (Tigard Mayor – Jan. 1984 – Dec. 1986)
- ❖ Former Mayor Gerald Edwards (Tigard Mayor – Jan. 1989 – March 1994)
- ❖ Senator Gordon Smith (Letter to be read by Councilor Moore.)
- ❖ Governor John Kitzhaber (Letter to be read by Councilor Scheckla.)
- ❖ Beaverton Mayor Rob Drake (Letter to be read by Councilor Dirksen.)
- ❖ *Pioneer woman reading letter (2-3 minutes)*

- ❖ Tigard-Area Resident Bev Froude
- ❖ Former Mayor Jack Schwab (Tigard Mayor – April 1994 – May 1994)
- ❖ Tigard Resident Betty Moore
- ❖ Tigard Resident Pat Keerins
- ❖ Tigard Resident Martha Bishop
- ❖ Tigard Resident Bibianne Scheckla
- ❖ State Representative Max Williams

- ❖ *1941 soldier departing from Tigard (2-3 minutes)*

- ❖ Tualatin Valley Fire & Rescue Representative Bob Wyffles,
- ❖ School District Representative – Carol Rutschman
- ❖ Tigard Chamber of Commerce Representative – President Sheri Matheis

- ❖ *Person talking about life in Tigard at that time and City's incorporation*

4. BUSINESS MEETING
 - 4.1 Council Communications & Liaison Reports
 - 4.2 Call to Council and Staff for Non-Agenda Items
5. VISITOR'S AGENDA (Two Minutes or Less, Please)
6. PROCLAMATION
 - a. World Population Awareness Week, October 21-27
7. CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:
 - 7.1 Approve City Council Minutes: July 10, 17, 24, and August 14, 2001
 - 7.2 Approve the Dedication of Reserve Strips as Public Rights of Way
 - 7.3 Approve Policies for Solid Waste Rate Actions – Resolution No. 01-____
 - 7.4 Local Contract Review Board:
 - a. Award Contract for the Construction of Embedded Crosswalk Lighting System to R. J. Rouse Electric, Inc.
 - b. Award a Personal Services Contract for Electrical Inspections and Plan Review to Clair Company.
 - *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council has voted on those items which do not need discussion.*
8. PUBLIC HEARING – FINALIZE FORMATION OF SANITARY SEWER REIMBURSEMENT DISTRICT NO. 20 – SW ROSE VISTA DRIVE
 - a. Open Public Hearing
 - b. Staff Report: Engineering Staff
 - c. Public Testimony
 - d. Council Discussion, Questions, Comments
 - e. Staff Recommendation
 - f. Close Public Hearing
 - g. Council Motion: Should Council approve the finalization of Sanitary Sewer Reimbursement District No. 20?
9. UPDATE FROM THE NEW LIBRARY CONSTRUCTION COMMITTEE ABOUT THE RECOMMENDED SITE FOR THE PROPOSED NEW LIBRARY
 - a. Staff Report: Library Staff
 - b. Presentation by the New Tigard Library Construction Committee Members
 - c. City Council Discussion and Direction to the Committee

10. CONSIDER REVISING TIGARD MUNICIPAL CODE CHAPTER 13.09, REIMBURSEMENT DISTRICTS
 - a. Staff Report: Engineering Staff
 - b. Council Questions/Discussion
 - c. Council Consideration: Ordinance No. 01-____
11. PUBLIC HEARING – CONSIDER REVISING TIGARD MUNICIPAL CODE CHAPTER 7.40, NOISE ORDINANCE
 - a. Open Public Hearing
 - b. Staff Report: Community Development Staff
 - c. Public Testimony
 - d. Council Discussion, Questions, Comments
 - e. Staff Recommendation
 - f. Close Public Hearing
 - g. Council Consideration: Ordinance No. 01-____
12. CONSIDER REVISING TIGARD MUNICIPAL CODE CHAPTER 2.09, BUILDING APPEALS BOARD
 - a. Staff Report: Community Development Staff
 - b. Council Questions/Discussion
 - c. Council Consideration: Ordinance No. 01-____
13. COUNCIL LIAISON REPORTS
14. NON AGENDA ITEMS
15. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(3), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
16. ADJOURNMENT

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PROCLAMATION

City of Tigard's 40th Anniversary Celebration

WHEREAS, September 11, 2001, marks the 40th anniversary of the incorporation of the City of Tigard, Oregon; and

WHEREAS, the City of Tigard has grown since 1961 from a population of 1,084 residing in a total land area of 1.2 square miles to a population in 2001 of 42,660 within 11.4 square miles; and

WHEREAS, Tigard has become a more diverse community whose residents, government professionals, business people and community group leaders are committed to working together to promote and protect Tigard's unique identity and quality of life; and

WHEREAS, it is fitting and proper to accord official recognition of this memorable anniversary and to the public celebrations commemorating this occasion;

NOW THEREFORE BE IT RESOLVED THAT I, James E. Griffith, Mayor of Tigard, on behalf of the entire City Council, do hereby proclaim:

***Tuesday, September 11, 2001 as
City of Tigard's 40th Anniversary***

and urge all citizens of Tigard to join in the celebration.

Dated this _____ day of _____ 2001.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

James E. Griffith, Mayor
City of Tigard

Attest:

City Recorder

PROCLAMATION

World Population Awareness Week

WHEREAS, world population stands today at more than 6.1 billion and increases by some one billion every 13 years;

WHEREAS, the most significant features of the 20th century phenomenon of unprecedented world population growth was rapid urbanization;

WHEREAS, cities and urban areas today occupy only 2% of the earth's land, but contain 50% of its population and consume 75% of its resources;

WHEREAS, along with advantages and amenities, the rapid growth of cities leads to substantial pressure on their infrastructure, manifested in sanitary, health and crime problems, as well as in deterring the provisions of basic social services;

WHEREAS, World Population Awareness Week was proclaimed last year by Mayors of 315 United States cities, as well as Governors of 32 states, and was co-sponsored by 231 organizations on 63 countries;

WHEREAS, in 2001 the theme for World Population Awareness Week is "Population and the Urban Future";

NOW THEREFORE BE IT RESOLVED THAT I, James E. Griffith, Mayor of Tigard, on behalf of the entire City Council, do hereby proclaim:

October 21 – 27, 2001 as

World Population Awareness Week

in the City of Tigard, Oregon

and urge all citizens of our city to take cognizance of this event and to participate appropriately in its observance.

Dated this _____ day of _____ 2001.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

James E. Griffith, Mayor
City of Tigard

Attest:

City Recorder

MINUTES
TIGARD CITY COUNCIL BUSINESS MEETING
July 10, 2001

Mayor Griffith called the meeting to order at 6:32 p.m.

Council Present: Mayor Griffith, Councilors Dirksen, Moore, Patton, and Scheckla.

- STUDY SESSION

- Review Health Insurance Coverage Options

Senior Human Resources Analyst Sherrie Burbank advised that health benefits for the City Council are included in the employee pool; therefore, it is no longer necessary for four out of the five Council members to participate in insurance benefits in order for other Council members to participate. Ms. Burbank noted that coverage would be changing per the new insurance plans offered by the City. She advised that Council members would need to fill out new enrollment forms.

- Review Council Groundrules

Council discussed the current Groundrules set forth by Resolution No. 00-52. After discussion, it was determined that wording would be changed under the "Study Session" topic on Page 3 of Exhibit A to 00-52. The changes occur in the last two sentences. New wording shall be:

"the decision on whether to continue the 'discussion' or not shall be determined by the majority consensus of the Council members present. If Council discusses an agenda topic in a study session prior to that Council meeting, either the presiding officer or City Manager will briefly state at the introduction of the agenda topic, the fact that Council discussed the topic in the study session and mention the key points of the discussion."

It was noted that Council has not been consistent with application of the provisions of this section and more emphasis will be given to do so.

There was discussion on Council statements and questions during review of agenda items. Councilor Moore clarified his concerns with Council discussion on agenda item topics in that he would like to see Council not stray in discussion and questions from the matter that is before them, because this widens the scope of what is being discussed. There was discussion on Mayor Griffith's role with regard to keeping discussions on point. The Mayor noted that he could "park questions" that may not appear to be directly associated with the matter being discussed.

Council also discussed the need to call for a point of order around 9:30 p.m. if it appears that the remaining agenda items will go beyond 10 p.m. The Council may decide to continue the meeting or select items to be rescheduled to a later meeting.

Mayor Griffith noted that the Council meetings are informal and he attempts to move items through quickly. Councilor Moore noted that the Council has been good at adapting to situations where sometimes a more formal demeanor is required. Councilor Patton complimented the Mayor on allowing each of the Councilors to give input on all topics.

➤ Administrative Items

▪ Update on the I-5/217 Ribbon Cutting

The I-5/217 Interchange Ribbon Cutting ceremony was held today and was well attended. There was some discussion on funds that may be available for transportation (approximately \$400 million). Needs are noted in the Washington Square area and Highway 99. Approximately half of the \$400,000,000 is slated to go to bridge repair, with the other half earmarked for preservation and modernization of roads. No guidelines have been established with regard to expenditure of these funds. The state has advised that they will be starting over with prioritization of projects. Approximately \$20 million will be appropriated for the Portland area and \$80 million will be allotted to Metro jurisdictions. There was some discussion about some state highways that could be improved and brought up to a better standard (Highway 99W, Hall Boulevard) and then have the City take over these roads from that point on.

Mayor Griffith said that these funds are scheduled to be appropriated by February 1, 2002.

It was noted that the legislature funded commuter rail.

- Mayor Griffith distributed new business cards and advised Council of his new office located on Greenburg Road in Tigard.

City Recorder Note: Two letters were distributed to the Council representing written testimony on the formation of EID (agenda item #9).

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:10 p.m. to discuss labor relations under ORS 192.660(1d).

Executive Session adjourned 7:30 p.m.

1. BUSINESS MEETING

- 1.1 The meeting of the Tigard City Council & Local Contract Review Board was called to order by Mayor Griffith at 7:35 p.m.
- 1.2 Council Present: Mayor Griffith, Councilors Dirksen, Moore, Patton, and Scheckla
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports – None.
- 1.5 Call to Council and Staff for Non-Agenda Items – None.

The City was awarded a \$250,000 grant for improvements to Cook Park. Community Development Director Jim Hendryx reviewed a map of Cook Park and described some of the proposals with regard to the first phase of the Cook Park Master Plan, which included parking lot improvements, underground utilities, emergency access road and the butterfly meadow. In order to receive the grant monies, the City will need to authorize the Mayor to sign the intergovernmental agreement with the State of Oregon, Oregon Parks and Recreation Department. It was noted that there was widespread support for Tigard to receive this money with acknowledgement of the need coming from Representative Max Williams, Washington County Chairperson Tom Brian, and citizens in the community such as Phil Pasteris, Dave Nicoli, School Superintendent Steve Lauder, Bev Froude and John Anderson. City Manager Bill Monahan noted he was pleased with the City of Tigard being awarded this

grant. He noted the efforts of Mr. John Anderson and City Associate Planner Duane Roberts. There was discussion on the timing of the four phases of Cook Park. It is anticipated that all four phases could be completed within four years; however, this will depend upon funding.

Motion by Councilor Moore, seconded by Councilor Dirksen, to authorize the Mayor to sign the intergovernmental agreement with the State of Oregon, Oregon Parks and Recreation Department. The motion was approved by unanimous vote:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

2. RECOGNIZE MR. BRUCE ELLIS, FOUNDER OF THE TIGARD FESTIVAL OF BALLOONS

Mayor Griffith presented a resolution to Mr. Bruce Ellis expressing appreciation for his service and work done to produce the Tigard Festival of Balloons.

Motion by Councilor Moore, seconded by Councilor Patton, to adopt Resolution No. 01-40

RESOLUTION NO. 01-40 – A RESOLUTION BY THE TIGARD CITY COUNCIL EXPRESSING APPRECIATION TO BRUCE ELLIS FOR THE SPLENDID QUALITY OF PUBLIC SERVICE THAT HE HAS PROVIDED TO THE COMMUNITY THROUGH HIS FOUNDING AND PRESERVATION OF THE TIGARD FESTIVAL OF BALLOONS.

The motion was approved by a unanimous vote:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

Mr. Ellis addressed the Council noting that 100,000 people were estimated to have attended this year's event. He noted that this year they were able to raise \$8,000 for a high school student who was injured and became paralyzed in a snow boarding accident. He noted this year they were also able to provide a balloon for disabled children to have tethered balloon rides. He appreciated the City's assistance for this event.

Councilor Moore acknowledged Mr. Ellis's efforts and he said that he would like to see this event continue.

3. VISITOR'S AGENDA – None.

4. CONSENT AGENDA:

Councilor Scheckla requested item 4.6 be discussed. This agenda item dealt with a personal services contract for Building Division inspection and plan review contract. Councilor Scheckla asked what would happen with this contract if there was a downturn in building activity. Building Inspector Gary Lampella advised that the contract is only used on an as-needed basis. He explained that of his five inspectors, three were on leave for varying reasons for extended periods. He noted that he was relying on contractual expertise and then would reduce this reliance once the inspectors were able to return to work.

Motion by Councilor Scheckla, seconded by Councilor Patton, to approve the Consent Agenda as follows:

- 4.1 Approve Council Minutes: May 8 and 15, 2001.
- 4.2 Receive & File:
 - a. Council Calendar
 - b. Tentative Agenda
- 4.3 Authorize the City Manager to Submit an Application for a Land and Water Conservation Fund Grant for Improvements to Woodard Park – Resolution No. 01-41
- 4.4 Initiate Vacation of Public Right of Way Located at SW Beveland Street at SW 72nd Avenue – Resolution No. 01-42
- 4.5 Amend Resolution No. 01-33 to Correct the Statement of Tigard's Permanent Property Tax Rate – Resolution No. 01-43

- 4.6 Waive Purchasing Rules 70.020, Screening and Selection Policy for Personal Services Contracts for the Building Division Inspection and Plan Review Contract with Winstead & Associates and Electrical Inspection Services – Resolution No. 01-44
- 4.7 Local Contract Review Board: Award Personal Computer Contracts to Computer Technology Link, Caliber Computer Corporation, Northwest Computing and Precision Computers
- 4.8 Approve Acquisition of Property Owned by Gerald C. Cach and Nicholas Capistrano for Burnham Street Improvements
- 4.9 Approve Addendum to the City Manager's Employment Agreement

The motion was approved by a unanimous vote:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

5. CONSIDER FEE ADJUSTMENT FOR LIQUOR LICENSE APPLICATION PROCESSING

Chief Ron Goodpaster presented the staff report, which is on file with the City Recorder. The proposed resolution would adjust the fee for liquor license application processing to the maximum allowable under ORS 471.166 without approval from the Oregon Liquor Control Commission. The maximum allowable is \$25. Mr. Goodpaster recommended the City stay with the maximum allowable because the City of Tigard is not in a position to justify a higher fee.

Motion by Councilor Patton, seconded by Councilor Dirksen, to adopt Resolution No. 01-45

RESOLUTION NO. 01-45 – A RESOLUTION OF THE TIGARD CITY COUNCIL ADJUSTING FEES FOR LIQUOR LICENSE APPLICATION PROCESSING AND SUPERSEDING THOSE FEES ESTABLISHED IN RESOLUTION NO. 90-25.

The motion was approved by a unanimous vote:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

6. CONSIDER THE ESTABLISHMENT OF A REVISED AND ENHANCED SEWER REIMBURSEMENT DISTRICT INCENTIVE PROGRAM

City Engineer Gus Duenas presented the staff report, which is on file with the City Recorder.

Mr. Duenas reviewed the proposed revisions to the Neighborhood Sewer Reimbursement District Incentive Program. There was brief Council discussion on the proposed changes.

Motion by Councilor Patton, seconded by Councilor Scheckla, to adopt Resolution No. 01-46

RESOLUTION NO. 01-46 – A RESOLUTION REPEALING RESOLUTION NO. 98-51 AND ESTABLISHING A REVISED AND ENHANCED NEIGHBORHOOD SEWER REIMBURSEMENT DISTRICT INCENTIVE PROGRAM.

The motion was approved by a unanimous vote:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

7. HEAR AN UPDATE ON THE BULL MOUNTAIN ANNEXATION WORK PLAN AND STUDY

Community Development Director Jim Hendryx reviewed the staff report, which is on file with the City Recorder.

His update included the annexation work plan and study. He reviewed the timeline of the work plan for looking at the issues involved in annexing the unincorporated Bull Mountain area.

8. OREGON DEPARTMENT OF TRANSPORTATION – REVIEW SIGNAL LOOP REPLACEMENT PROJECT

Steve Harry and Larry Krettler of the Oregon Department of Transportation reviewed this agenda item with the Council. This signal loop replacement project will require a variance to the City's noise ordinance since this work will be done at night. The construction will occur at signals at three Tigard locations: SW 72nd at Hunziker Road, Highway 99 at Durham Road, and Highway 99 at McDonald/Garde.

Mr. Krettler noted that the loops are old and are not functioning properly and the purpose will be to better synchronize lights in the City. There was discussion regarding the traffic problems that occur when the signal loops are not working properly.

There was discussion on the public notice that will occur when the work will be performed. City Manager Bill Monahan noted that night construction was used for the grinding and paving of Highway 99 about a year ago. He noted that this project went well with no complaints from citizens.

9. CONTINUATION (FROM THE JUNE 12, 2001, CITY COUNCIL MEETING) OF PUBLIC HEARING – CONSIDERATION OF THE FORMATION OF AN ECONOMIC IMPROVEMENT DISTRICT (EID) TO ESTABLISH A FRAMEWORK FOR THE TIGARD CENTRAL BUSINESS DISTRICT (TCBDA) TO CONTINUE TO PROMOTE AND REVITALIZE DOWNTOWN

a. Public Hearing Continued

Mayor Griffith continued the public hearing from the June 12, 2001 Council meeting

b. Review of Proceedings by Staff: Community Development Department

Community Development Director Jim Hendryx reviewed the staff report, which is on file with the City Recorder.

The staff report contains a history of the process followed to date. Mr. Hendryx reviewed the proposal before the Council which is that the Council adopt an ordinance creating a downtown economic improvement district, adopting an economic improvement plan for the downtown improvement district, and calling for a public hearing on proposed assessments and surcharges. Mr. Hendryx reviewed the information on assessments.

There was discussion on the past and the purpose for considering the economic improvement district at this time. Councilor Patton noted that the City had wanted participation from the Central Business District Association in determining their future. She noted the use of City resources but the need for buy-in from the downtown before this could proceed. The partnership would be split three ways financially with the total of \$80,000 per year split among the City, business owners, and property owners. Mr. Hendryx noted that notice would be sent out to business and property owners so that they would know what their assessments would be. City Attorney Ramis clarified that a future hearing two assessment decisions will be considered by Council: whether to assess property owners, and whether to assess business owners. If property owners or business owners remonstrate in the amount of 33 percent of the total against the formation of the district, then the Council cannot consider formation.

c. Public Testimony

- Forrest Johnson, 8965 SW Burnham, Tigard, Oregon, read a letter from Carl H. Johnson of 8965 SW Burnham Street, Tigard, Oregon, 97223. Mr. Johnson's letter noted that the proposed Economic Improvement District/Business Improvement District (EID/BID) offered nothing that wasn't currently available from existing resources. Mr. Johnson's letter also referred to the preference of approving something such as a local improvement district (LID) which buys something substantial and long-lasting.
- Richard Miller, 8970 SW Burnham, Tigard, Oregon, 97223, noted that he was a business and property owner on Burnham Street since 1974. He

said that he was in favor of "something happening." He referenced something such as a "Main Street plan." However, he questioned the fact that the proposal before the Council would raise taxes for business owners by 70 percent. He also was concerned that the Downtown Association may not share the same economic goals as many of the business and property owners.

Councilor Moore clarified in response to a comment from Mr. Miller that this is not a "tax," but rather a way to raise to finance programs. Councilor Moore advised that this is an assessment by the downtown, for the downtown.

- Mike Stevenson, 9040 SW Burnham, Tigard, Oregon, 97223, noted that he has been on the Burnham property for six months, but has owned a business in Tigard for 15 years. He advised that initially he was against the proposal, but noted that Mr. Ellenson of the Tigard Central Business District Association has addressed most of his concerns. He noted that this effort could be a way to address some of the downtown area's needs. He said that there was a need for increased access to the downtown. He advised there is a need to keep business people informed.

He referred to the possibility of light rail in the downtown area and wondered where the City would expect to expand its services. He said that he would like to see more vision for the downtown Tigard area. He said that he agrees that a vision is needed for the downtown area and suggested that the City was "too hands off." Councilor Moore said that if there were some kind of advancements made in the downtown area, that there could possibly be more community support. There was further discussion on the light rail and the need for access, along with the lack of parking in the area. Mayor Griffith noted that last week funding had been verified for commuter rail. He said that there will be concerns about where the parking will be located for the light rail terminal. Mayor Griffith also mentioned the New Library Construction Committee has identified one possible site in the downtown area for a future library.

- Jan Richardson, 12345 SW Main Street, Tigard, Oregon, noted that she owned a small business in the downtown area and that she viewed the process before the Council tonight as a "positive thing." She agreed that vision is needed for the downtown area and referred to areas in Lake

Oswego and also NW 23rd Street in Portland, Oregon, and she would like to see the same thing happening in Tigard.

In response to a question from a person in the audience, Mr. Hendryx responded that both groups, the property and business owners, will be voting on whether to form an EID or a BID. If an individual is both a property owner and a business owner, then they would receive two letters and would need to send the City a remonstrance (letter noting they did not want to form). The individual would need to respond to both letters if they received two.

d. Recommendation by Community Development Director

Mr. Hendryx noted that the staff recommends that the Council adopt an ordinance creating a downtown economic improvement district, adopting an economic improvement plan for the Downtown Economic Improvement District and calling for a public hearing on proposed assessments and surcharges.

If the Council adopts the proposed ordinance then a hearing would be scheduled for August 14 on the assessments.

e. Mayor Griffith closed the public hearing

Councilor Moore clarified that if the Council approves the ordinance at this meeting, the City would start assessing business and property owners. Business and property owners would be given the opportunity to say that they did not agree with the assessment.

Motion by Councilor Moore, seconded by Councilor Patton, to adopt Ordinance No. 01-10

The City Recorder read the following:

ORDINANCE NO. 01-10 – AN ORDINANCE CREATING A DOWNTOWN ECONOMIC IMPROVEMENT DISTRICT, ADOPTING AN ECONOMIC IMPROVEMENT PLAN FOR THE DOWNTOWN ECONOMIC IMPROVEMENT DISTRICT AND CALLING FOR A PUBLIC HEARING ON PROPOSED ASSESSMENTS AND SURCHARGES.

The motion was approved by a majority vote:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	No

It was clarified that if no letter is received from the business or property owner, then there would be no remonstrance. Mr. Ramis reiterated that it was automatic that if 33 percent remonstrated against the formation of the district then the Council could not approve the formation of the district.

10. EXECUTIVE SESSION - No Executive Session was held.

Meeting adjourned at 9:45 p.m.

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: _____

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MINUTES
TIGARD CITY COUNCIL MEETING
July 17, 2001

1. WORKSHOP MEETING

- 1.1 Call to Order – Meeting was called to order at 6:34 p.m.
- 1.2 Roll Call: Mayor Griffith; Councilors Dirksen, Patton, and Scheckla
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None.
- 1.5 Call to Council and Staff for Non Agenda Items: None.

2. REVIEW AQUIFER STORAGE AND RECOVERY (ASR) PHASE 1 REPORT

Public Works Director Ed Wegner introduced Utility Manager Dennis Koellermeier. Mr. Koellermeier gave an overview of the ASR, which is one of several alternatives to improve Tigard's water system. The ASR system would use existing wells and source supplies. The feasibility report for ASR is on file with the City Recorder. This report presents the details of what is encompassed by an ASR system.

Mr. Joe Glicker of Montgomery Watson presented information on the ASR. The PowerPoint presentation used by Mr. Glicker is on file with the City Recorder. City Council discussion followed on an ASR system. In response to a question from Councilor Patton, Mr. Glicker responded that the State of Oregon appears to be accepting of ASR systems, but wants some demonstration that such systems will succeed. In response to a question from Councilor Scheckla, Mr. Glicker noted that water could be stored for up to a one- to two-year period. The water does not discolor. Tests are being done to determine if there are leakage issues in the wells identified for the ASR. Water quality tests are also a component of ASR.

Councilor Patton noted in the long term that potentially ten wells would be available for an ASR system in Tigard. An ASR system can be developed in phases so incremental decisions can be made. Public Works Director Wegner confirmed that it would be likely that an ASR program would be phased in over stages based on the need and the financial ability for capital investment. In addition, water resources will continue to be explored with the City of Portland and the Joint Water Commission. There was discussion about how much water the ASR could provide. For four to six million gallons per day, approximately ten wells would be needed.

Council discussed current water needs and the alternatives of how and when to buy water. Councilor Patton commented that the ASR would give the City some maneuvering room to control costs while providing water to customers. Mr. Wegner

noted that the Intergovernmental Water Board (IWB) has approved Phase 2 of the ASR proposal. Phase 2 will be presented to the City Council next week for approval.

In response to a question from Councilor Scheckla, Mr. Wegner noted that the program to have Tigard residents water every other day (based on the date of the month [odd/even] corresponding to the last digit of their house number [odd/even]) has helped so that there have been no water shortages this summer. Mr. Wegner said that Tigard residents appear to be conserving water all year long and advised that there is less water usage in the City even with new population growth. Councilor Dirksen urged that the Public Works Director keep water conservation communications going out to the citizens and compliment them on the good job they have been doing.

There was discussion on problems experienced by the City of Salem and bacteria growth in stored water. Mr. Glicker advised how this would be addressed in an ASR system.

3. REVIEW RIGHT-OF-WAY AND SIDEWALK MAINTENANCE

Public Works Director Ed Wegner introduced this agenda item. Property Manager John Roy reviewed the history of the right-of-way maintenance program noting that maintenance had been addressed through a complaint-driven process over the years. A copy of the Staff Report is on file with the City Recorder.

Mr. Wegner noted that there has been success with notifying property owners of their responsibilities with regard to maintenance of areas along the right of way. Recently, after notice was received, property owners resolved maintenance issues for rights of way along Hall Boulevard and Sattler Street. Mr. Wegner noted that staff was not opposed to providing maintenance along streets such as Durham Road and Sattler Street, but noted the need for consistency. He also said that, if the City maintains Durham Road right-of-way areas, this might trigger requests for maintenance for other streets.

The current staff proposal for a City right-of-way maintenance program covers areas that are adjacent to City properties or properties that are adjacent to steep slopes, ditches, and state and railroad rights of way. The Budget Committee did not approve the proposal for an enhanced right-of-way maintenance program. City Manager Bill Monahan advised that, if an enhanced program is approved by the Council, then the Council would need to determine how the program would be funded.

In response to an inquiry by Councilor Scheckla, Mr. Monahan noted that no agreement with Summerfield residents has been located regarding to maintenance responsibilities of rights of way.

Councilor Dirksen commented that the right-of-way maintenance situation should be reviewed, noting there is no long-term funding for an enhanced right-of-way program within the City. In the shorter term he noted the Council needed to focus on what was affordable.

Mr. Paul Owen, Summerfield Liaison, addressed the City Council. (A copy of Mr. Owen's letter dated July 17, 2001, is on file with the City Recorder.) Mr. Owen noted disappointment with the staff's recommendation, which dealt only with right-of-way maintenance and not the liability concern with regard to the sidewalks. He noted the high use of the sidewalks because of the close proximity to the high school. Mr. Owen requested the City consider maintenance of right of way on fully improved collector streets.

There was discussion on the liability issue with regard to sidewalks. The liability responsibility rests with the landowner abutting the sidewalk.

Mr. Wegner referred to an earlier discussion with the City Council that included the proposal that if a sidewalk was brought up to standard, the City could accept the sidewalk and assume the liability and future repairs. This proposal was not pursued.

City Council discussion followed. Councilor Patton noted she was opposed to continuing the complaint-driven maintenance program used in the past, which was inconsistent, piecemeal, and inequitable. She also opposed maintaining Durham Road specifically citing the need for equitable treatment for other areas in similar circumstances. She said she would have liked to support a citywide enhanced right-of-way maintenance program, but the City does not have the money to do this now given other funding needs and scarce resources. She recommended staff continue an aggressive education campaign advising property owners of their responsibilities to maintain adjacent rights of way. At this time, she said the City should "go back to basics" and to be consistent, which will mean that those who have received maintenance before, will not continue to receive this service.

Councilor Scheckla noted that, in the past, exceptions have been made. He referred to SW North Dakota Street where traffic islands and diverters were constructed at the request of those who lived in that area.

Councilor Scheckla noted that he liked the compromise position suggested by Paul Owen, which was to have the City recognize that the sidewalks, curbs, and streets, were designed and built by the City of Tigard and the City would therefore be responsible for the maintenance, repair, and liability for said improvements. If the City agreed to the above, then Summerfield would agree to maintain the 15-foot planter strip as it is now without liability.

Councilor Dirksen noted that the maintenance of right of way is a luxury that the City could not afford at this time. He advised that he thinks the sidewalk issue is separate from the maintenance of the planting areas along the rights of way. He said he would be willing to consider the City taking over control of the sidewalks that meet City standards and to implement a citywide program for this. After discussion, it was clarified that the sidewalk maintenance Councilor Dirksen was referring to was for those sidewalks along major collectors only.

Mayor Griffith noted that he, too, would have liked to see the enhanced right-of-way maintenance program implemented, but also agreed with the other Councilors that this was more than the City could afford. He concurred that maintenance of the sidewalks along major collectors, once brought up to standards, has some merit. He suggested that he would like to continue to review options about how an enhanced maintenance program could be implemented.

There was discussion on a maintenance fee that might represent an alternative for funding and implementation of an enhanced right-of-way program.

Councilor Patton advised she still had some concerns with providing service for only certain areas.

Mayor Griffith summarized the majority of Council direction with regard to the sidewalk issue which would be for the staff to review the cost of accepting the maintenance of sidewalks (once brought up to City standards) for major collectors for non-commercial (residential areas). He clarified he did not expect staff to prepare a complete inventory of sidewalks indicating those that need to be brought up to standard, but requested a "ballpark" figure about what it would cost the City to maintain sidewalks once they are accepted by the City. City Manager Monahan noted that it had been determined that insurance (liability) costs would be negligible. Homeowners would maintain responsibility to keep sidewalks clear of debris, ice, and snow.

In response to a question from Summerfield resident Paul Hunt whether the City would consider providing maintenance on rights of way (plant areas), Mayor Griffith advised that this would be an item he would like to discuss with Mr. Hunt and Mr. Monahan at an upcoming meeting scheduled for the three of them. Mr. Monahan noted that the City provides contract service to help the City of Durham to maintain its parks, but this is one government entity providing assistance to another government entity. There are restrictions (Associated Oregon Industries) with regard to governments providing services to the private sector.

Council meeting recessed: 8:11 p.m.

Council meeting reconvened: 8:20 p.m.

4. REVIEW POTENTIAL AMENDMENTS TO THE NOISE ORDINANCE – TIGARD MUNICIPAL CODE CHAPTER 7.40, ARTICLE IV

Community Development Director Jim Hendryx introduced this agenda item, which is a review by City Council of staff proposals for changes to the current noise ordinance in the Municipal Code. Planning Manager Dick Bewersdorff reviewed the staff report, which is on file with the City Recorder. Mr. Bewersdorff also reviewed a PowerPoint presentation, which is on file with the City Recorder. His presentation included background information, an outline of issues and options, comments on the options, and recommendations by staff.

After discussion on elements of the proposed ordinance, staff and City Council discussed the proposed staff recommendations. City Council agreed that the noise ordinance should be revised. City Council consensus with regard to the amount of proof for a violation of the noise ordinance based on the subjective standard was that at least three witnesses would be required when a violation is reported. One of the witnesses could be a City employee (i.e., a Police or Code Enforcement Officer). A hearing will be conducted for the proposed changes. Staff will return to the City Council in August with the proposed ordinance amendments.

5. REVIEW REQUEST FROM COMMUNITY PARTNERS FOR AFFORDABLE HOUSING FOR FEE REDUCTION REQUEST

Community Development Director Jim Hendryx introduced this agenda item wherein the Community Partners for Affordable Housing (CPAH) is requesting a \$10,000 fee reduction for its new 26-unit Village at Washington Square affordable housing project.

Associate Planner Duane Roberts reviewed the staff report, which is on file with the City Recorder. As part of the staff report, a memorandum from City Attorney Ramis is on file, which addressed waiving or reducing Park System Development Charges. In response to the question as to what concerns should the City have regarding adopting provisions that would allow a waiver of Park System Development Charges for affordable housing projects, City Attorney advised that the risk of litigation by other developers is increased. Other developers could challenge a waiver on statutory equal protection or takings grounds.

City Manager Bill Monahan noted that this request represented an instance where the staff wanted to show to the City Council the full contributions (from CPAH and other agencies) being requested of the City. In a memorandum attached to the Council Agenda Item Summary the current Tigard contributions to affordable housing is outlined.

Council discussion followed with regard to the level of contribution to affordable housing by the City given the City's capacity and responsibility to deliver services.

Mr. Monahan, in response to a question from Councilor Scheckla, noted that the City of Tigard probably does more than most cities in the State of Oregon with regard to contributing to affordable housing. The City of Portland probably does more than the City of Tigard in the way of making such contributions.

Jill Sherman, representing CPAH, addressed the City Council and reviewed CPAH's request for a yearly contribution as well as for the City to have a stated policy on how a fee reduction can be obtained. If a policy were stated, then CPAH would know how they could go about meeting the criteria.

There was discussion on the tax abatement approval that CPAH received from the City of Tigard. It was noted that CPAH makes annual application for this tax abatement to the City of Tigard. In order to be absolved of any property taxes, at least 51% of the taxing entities must approve the abatement. Therefore, CPAH needs to receive tax abatement approval from the Tigard-Tualatin School District, Tualatin Valley Fire & Rescue District and the City of Tigard in order to qualify for the abatement.

Mr. Monahan suggested that if the City Council would want the City to assist CPAH with regard to the SDC fees that the fees could be paid to the SDC fund by the City's general fund. Another suggestion was that if the City Council chooses to pay the SDC fees then the amount funded could be applied as a credit against future requests for funding from CPAH.

Councilor Patton commented that one of the City Council goals is to address affordable housing in the City of Tigard. She noted the need to schedule some time for a long-term policy discussion on what the City's effort will be with regard to affordable housing. At this time, she noted that the issue was to consider the fee waiver request. She advised that the City now addresses affordable housing through its social services program. Councilor Patton said that when the City Council discusses affordable housing, the City Council should also decide whether affordable housing should be part of the social services funding consideration. She referred to recent law enforcement incidents at the Villa La Paz housing development. She said there is a need for CPAH to communicate closely with the City of Tigard and to make efforts to see that the Village at Washington Square project did not develop similar law enforcement problems as has been experienced at Villa La Paz.

Councilor Dirksen noted that he would like to grant the amount requested by CPAH but understood Councilor Patton's concerns. He advised that he viewed this request as being different from social services in that it is a one-time request for a development.

Councilor Scheckla noted that he agreed with Councilor Patton.

Also discussed was the alternative of reducing the amount of assistance requested from the full \$10,000, to this year's social services non-allocated funds (\$4,000).

Mayor Griffith noted that it was difficult to determine "where to draw the line." He said he agreed that a policy needs to be established with regard to affordable housing and social services funding. He also noted that the request from CPAH for this money could be done as a budget adjustment if considered to be an emergency; however, he did not think that this request qualifies as an emergency. He said there is a need to strive for equity for all City of Tigard citizens when allocating resources.

It was determined that an affordable housing strategies discussion would be scheduled tentatively for the September 18, 2001, City Council workshop meeting.

6. REVIEW POTENTIAL AMENDMENTS TO THE TIGARD MUNICIPAL CODE (TMC) – TITLES 1 AND 2

City Recorder Cathy Wheatley reviewed the staff report, which is on file with the City Recorder. Ms. Wheatley reviewed seven proposals to address TMC language changes. Council consensus for these changes were as follows:

- Proposal No. 1 Section 1.01.010 - Title
This section shall be changed to read as follows: "The Tigard Municipal Code is adopted as the official City Code of the City of Tigard. The Code shall be cited as the Tigard Municipal Code published under general authority of the City Council and maintained as provided in this chapter by the City Recorder."
- Proposal No. 2 Section 1.01.080 – Editing of Code
This section shall read: "In preparing the codified editions of ordinances for publication and distribution, the City Recorder shall not alter the sense, meaning, effect or substance of any ordinance, but with such limitations, may renumber sections and parts of sections of the ordinances, change the wording of headings, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, strike out figures or words that are merely repetitious, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors."
- Proposal No. 3 Section 1.01.060 -- Constitutionality
Attorney Gary Firestone had recommended to the City Recorder that the last clause of Section 1.01.060 of the Tigard Municipal Code be deleted. The clause to be removed reads as follows: "...and if for any reason this Code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect."
- Proposal No. 4 Section 1.12 Initiative and Referendum.

Ms. Wheatley reviewed current language of section 1.12, which pertained to initiative and referendum. Council discussed the procedural rules followed by the State of Oregon where, when filed, an initiative petition must contain enough qualified signatures by a certain deadline. This deadline also determines the election date the proposed measure will be submitted to the voters. City Council consensus was that the City Recorder could pursue setting a deadline for petition signatures to be submitted as allowed by law. One option might be to require petitioners name an election date on their petition.

- Proposal No. 5 – Section 2.40 Nominating Procedures.
After brief discussion, Council determined that no changes to the nominating procedures were to be considered.
- Proposal No. 6 – Section 2.56.010 – Recorder – Appointment and Removal.

Council agreed that the words “City Administrator” should be changed to “City Manager” where appropriate. Council also agreed that the wording should be amended so that the Recorder is appointed and removed upon advice of the City Manager and the consent of the majority of Council. Council also agreed that wording in the last sentence should be removed which refers to the “incumbent” since Loreen Mills was the incumbent at the time this was written and this phrase is no longer relevant.

- Proposal No. 7 – Section 2.60.010 – City Attorney – Appointment and Removal

Council agreed to the change in wording so that the City Attorney is appointed and removed with the consent of the majority of Council.

➤ CONTINUATION – STUDY SESSION

- Tigard Blast Parade – There was discussion about Council participation in the upcoming Tigard Blast Parade.
- Metro Meeting – A meeting with Metro representatives is scheduled for September 10 at 6:30 p.m.
- Volunteer Recognition Event – City Manager discussed with the City Council the upcoming volunteer recognition event.
- National League of Cities Conference – Staff advised that the City Council has been registered to attend this conference in December. There was a brief discussion on air travel planning.

7. COUNCIL LIAISON REPORTS: None.
8. NON-AGENDA ITEMS: None.
9. EXECUTIVE SESSION: Canceled.
10. ADJOURNMENT: 10:10 p.m.

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: _____

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MINUTES
TIGARD CITY COUNCIL MEETING
JULY 24, 2001

- STUDY MEETING

Council Present: Mayor Griffith, Councilors Dirksen, Moore, Patton and Scheckla (arrived at 6:34 p.m.).

Meeting was called to order at 6:32 p.m.

Administrative Items:

- City Manager Monahan reminded the City Council that the Tigard Blast will occur on August 3, 4 and 5.
- City Manager Monahan reminded the City Council of a focus meeting pertaining to the potential Bull Mountain Annexation at Deer Creek Elementary School on July 26, 2001, from 7-8:30 p.m.

Councilor Scheckla arrived at 6:34 p.m.

- City Manager Monahan reminded the City Council of upcoming legislative redistricting hearings on Friday, July 27, at noon at the Beaverton Public Library and at 7 p.m. at the Garden Home Recreation Center. Mayor Griffith reviewed proposed boundary changes noting that, at this time, the plan is to add part of the City of Portland to the district that Tigard is in and to delete King City's from Tigard's district. Mayor Griffith will try to attend the hearing at the Beaverton Public Library.
- City Manager Monahan noted that staff is recommending that the hearing for the Blue Heron matter be opened and continued to the City Council meeting of August 14, 2001. He said there was a problem in that the site was not posted (notice of hearing) as called for in the Tigard Municipal Code. The set over of the hearing will allow for the proper meeting noticing to be accomplished.
- City Manager Monahan reviewed the Cook Park expansion contract recently awarded. The contractor working on this Phase 1 has proposed a change order to the original scope of services to include grading of the sports fields. A memorandum was distributed to the City Council outlining the benefits of this proposal. The memorandum also explained how this would assist the Atfalati Recreation League. The League owes the City of Tigard some funds. Mr. Monahan noted that he has been advised that a check will be delivered by the end of the week to the City of Tigard in the amount \$20,000 to bring the League

current. In response to a question from Mayor Griffith, City Manager Monahan noted that the City Council should act on whether or not to approve the request for the change order. This will be placed on this evening's agenda as a non-agenda item.

- Community Development Director Hendryx reviewed a memorandum distributed to the City Council regarding structures and power line easements. This memorandum is on file with the City Recorder. Recently a father and son received an electrical shock using a play structure located under a power line in Eagles View Subdivision.

Mr. Hendryx reviewed that an electrical inspector made a comment that he "wouldn't let anyone build one of these things within a half mile of a high voltage power line." Mr. Hendryx said this statement was meant to be descriptive and was not a literal comment. The inspector identified himself to the media as a contract inspector and said his view was not necessarily the City's opinion. The memorandum further stated that structures located under a power line could be a hazard. The homes in this subdivision are not subject to any more hazard to electrical shocks than homes in any other subdivision. The electrical fields are localized within a few of the towers and do not affect the livability of the neighborhood. The structure in question was moved to a safe location and the hazard abated.

- > EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:59 p.m. to discuss labor relations, real estate transactions and pending litigation under ORS 192.660(1)(d)(e) and (h).

Executive Session closed at 7:30 p.m.

Council meeting reconvened at 7:35 p.m.

1. BUSINESS MEETING

- 1.1 Call to Order - City Council & Local Contract Review Board
- 1.2 Roll Call: Mayor Griffith, Councilors Dirksen, Moore, Patton and Scheckla.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None
- 1.5 Call to Council and Staff for Non-Agenda Items

- Cook Park Expansion Contract Addendum – Council to convene as the Local Contract Review Board.

2. VISITOR'S AGENDA: None.

3. CONSENT AGENDA:

City Attorney Ramis advised that Item 3.5 should be removed from the Consent Agenda in light of the City of Portland litigation with Qwest and some of the questions surrounding franchise agreements at this time. Action on this item should be delayed until it is better known what course should be taken.

Councilor Dirksen requested that Item 3.6 a. be removed from the Consent Agenda to be voted on separately. He noted that he would prefer to not vote on this item since he was not on the City Council at the time the original contract for the Washington Square Implementation Plan was approved.

Motion by Councilor Moore, seconded by Councilor Scheckla, to approve the Consent Agenda without items 3.5 and 3.6 a.

- 3.1 Approve Council Minutes: May 22, 2001
- 3.2 Receive and File: Council Goal Update
- 3.3 Approve Modifications to Council Groundrules – Resolution No. 01-47
- 3.4 Approve Budget Amendment No. 2 to the FY 2001-02 Budget to Transfer \$29,376 from the Water Quality/Quantity Fund Contingency to the Capital Improvements Program for Funding of the Healthy Streams Plan Agreement with Clean Water Services (Formerly Unified Sewerage Agency) – Resolution No. 01- 48
- ~~3.5 Authorize the City Manager to Sign a Settlement Agreement with Qwest~~
- Item 3.5 deleted upon advice from City Attorney Ramis.
- 3.6 Local Contract Review Board:
 - a. Authorize the City Manager to Sign a Contract with Spencer & Kupper for Consultant Services for the Washington Square Regional Center Implementation Plan – Resolution 01-49 (Considered separately – see below.)
 - b. Authorize the City Manager to Sign Aquifer Storage and Recovery (ASR) Project, Phase 2, Contract with Montgomery Watson
 - c. Reject Bid Proposals for the Construction of Bonita Road Sanitary Sewer Improvements
 - d. Reject Bid Proposals for the Construction of FY 2001-2002 Pavement Major Program (PMMP) and Embedded Crosswalk Lighting System Project
- 3.7 Adopt the OPEU Collective Bargaining Agreement and Authorize the City Manager to Sign the Final Draft – Resolution No. 01-50

The motion was approved by a unanimous vote of Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

Item 3.6 a: Authorize the City Manager to Sign a Contract with Spencer & Kupper for Consultant Services for the Washington Square Regional Center Implementation Plan – Resolution 01-49

Motion by Councilor Moore, seconded by Councilor Patton, to approve Item 3.6a. (including Resolution No. 01-49).

The motion was approved by a majority vote of Council present; 4-0-1:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Abstained
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

4. PRESENTATION BY PORTLAND GENERAL ELECTRIC (PGE) ON RECENT CIVIC RESPONSIBILITY AND ENERGY ISSUE POLLS

Finance Director Prosser introduced this agenda item and Karen Lee of PGE. Ms. Lee presented the results of a commissioned poll performed by Davis & Hibbitts on statewide attitudes toward civic responsibility and energy issues. The civic responsibility portion of the survey tested attitudes of frequent, occasional, and non-voters toward voting and community involvement. A copy of Ms. Lee's presentation is on file with the City Recorder.

5. UPDATE FROM THE NEW TIGARD LIBRARY CONSTRUCTION COMMITTEE

Library Director Barnes introduced the Committee. Committee members present: Sue Carver, George Burgess, Lonn Hocklin, Jim Funk, Kathy Sleeper, Curtis Tigard, David Chapman, Elaine Harris, Brian Douglas. Staff members serving on the Committee: City Manager Monahan, City Engineer Duenas, and Library Director Barnes. Council liaison to the Committee: Councilor Patton.

Ms. Barnes brought the City Council up to date on decisions made, including that the proposed library would be a 47,000 square foot, two-story structure. She reviewed the criteria for selecting sites.

Mr. Burgess described the proposals by the architect presented at the last New Library Construction Committee meeting for a model. The model would give a visual representation of what the proposed library would look like on a yet-to-be-determined site. Interior adjacencies will also be described that would detail the layout of the building.

Ms. Carter briefly reviewed the public information campaign. The Tigard Times and Cityscape will be used to disseminate information to the public. She also noted that City events would represent a means for circulating information. She mentioned that information was distributed at the Balloon Festival (330 surveys were turned in). In addition, the Committee was present at the 4th of July Celebration at Cook Park. Members of the New Library Construction Committee will distribute information at the upcoming Tigard Blast. Fact sheets are being assembled and the model of the proposed library will be used to inform the public. The Committee will continue to look for opportunities to present information and, once the site is selected, the Committee members will begin meeting with small groups throughout the City.

Mayor Griffith noted that if any interested group would like to have a representative of the Library speak to them, they should contact Library Director Barnes.

Discussion followed on the fact that the proposed library would be designed to meet library needs in the community for the next 15 to 20 years. All of the sites would allow an option for expansion.

City Manager reported on the potential sites and reviewed the site-selection criteria. Discussions have been held with representatives for all three sites to determine availability. At this time the Committee has decided to focus on only two of three sites since issues have developed on one of the sites.

More information and a recommendation on the final site will be presented to the City Council on August 28, 2001.

Councilor Scheckla commended the Committee for the work they have done to date.

Councilor Patton recommended that the work be started as possible on the design of the model and illustrations of adjacencies. Consensus of City Council was that the Committee could continue to work with the architect on the illustration of adjacencies.

6. QUASI-JUDICIAL PUBLIC HEARING – CONSIDER THE APPEAL OF THE BLUE HERON PARK SUBDIVISION (SUB 2001-00001, PDR 2001-00001, ZON 2001-0002, SLR 2001-00003, VAR 2001-00002)

Mayor Griffith read the agenda title and the following description for this hearing item.

ITEM ON APPEAL: On June 11, 2001, the Planning Commission denied a request for approval of an 18-lot subdivision on 4.15 acres. The lots are to be developed with attached single-family homes. Lot sizes within the development average just over 3,800 square feet. Development is to be clustered on the west side of the development site, allowing for the preservation and enhancement of the pond, wetland, and stream area on the eastern portion of the property. A sensitive lands review is required for the development due to the presence of steep slopes, a wetland, and a natural drainageway on the site. On June 22, 2001 an appeal was filed regarding the Planning Commission's denial of the project. **LOCATION:** 12450 SW Walnut Street; WCTM 2S103BC, Tax Lot 3900. The project site is located on the south side of SW Walnut Street, opposite of SW 124th Avenue and west of SW 121st Avenue. **ZONE:** R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. **REVIEW CRITERIA BEING APPEALED:** Community Development Code Chapter 18.390.

- a. Mayor Griffith opened the Public Hearing.
- b. Planning Manager Bewersdorff introduced Associate Planner Kevin Young who advised that staff recommended the public hearing be continued to August 14, 2001. He advised of problems with regard to posting the site with a hearing notice. The site is now posted. Mr. Young previewed the history of the decision as outlined in the City Council meeting packet materials. He noted that staff continues to recommend approval for the development and that letters received to date by staff have been forwarded to the City Council.

There were questions regarding process and the set over of the hearing until August 14, 2001. City Manager Monahan noted that at the August 14 public hearing additional details will be described for the benefit of City Council.

Councilor Scheckla noted concerns about whether the Town Hall would be large enough for the anticipated public attendance at this hearing. After brief discussion, it was determined that the hearing would be held at the Town Hall since notification specified this particular location.

It was also noted that final minutes of the Planning Commission meeting would be included with the meeting materials for the August 14 hearing.

Motion by Councilor Moore, seconded by Councilor Dirksen, to continue the appeal hearing for the Blue Heron Park Subdivision to August 14, 2001.

The motion was approved by a unanimous vote of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

There was discussion of the arrangement of items on the August 14, 2001, City Council meeting. The EID/BID hearing will begin at 6:30 p.m. with the Blue Heron public hearing scheduled for 7:30 p.m.

A member from the audience noted that the minutes of the Planning Commission appeared to be very "pro" development. She suggested that it would be helpful to have a Planning Commissioner present at the City Council public hearing to testify to the City Council. City Attorney recommended against having a planning commissioner attend to testify citing the commission's role as an objective decision maker in judging the merits of quasi judicial land use matters.

7. COUNCIL LIAISON REPORTS: None.

8. NON AGENDA ITEMS:

- (Local Contract Review Board) Proposed change order to the original scope of services for the Cook Park Expansion Phase 1 contract with Northwest Earthmovers, Inc. (For additional information, see discussion by the City Council during the Study Session portion of this meeting.)

Property Manager John Roy reviewed the Phase 1 components for improving Cook Park. He noted that the proposed change order would result in savings of about \$16,500. This amount would have been spent hauling off excess soil from grading operations of the parking lot. Instead the soil would be placed on the sports field and then graded, which was planned to be done at a later date. An additional benefit was that the topsoil utilized from the parking lot area was of higher quality than imported soil. The contractor proposes to perform the sports

field infrastructure, sanitary/storm sewer improvements, and grading (which will include erosion control measures) for the sum of \$59,936.50. According to the purchasing rules, a purchase order can be amended for up to 20% of the original purchase order.

Motion by Councilor Patton, seconded by Councilor Dirksen to approve the proposed change order.

The motion was approved by a unanimous vote of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

> STUDY SESSION (continued)

- City Manager Monahan reported that the National League of Cities conference reservations have been made for the City Council. There was discussion on airplane reservations. There was discussion about reimbursement payment due from City Council members if his/her spouse attends.

9. EXECUTIVE SESSION: Canceled.

10. ADJOURNMENT: 9:25 p.m.

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: _____

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MINUTES
TIGARD CITY COUNCIL MEETING
AUGUST 14, 2001

1. BUSINESS MEETING

- 1.1 Call to Order - City Council & Local Contract Review Board
- 1.2 Roll Call - Present: Mayor Griffith, Councilors Dirksen, Moore, Patton and Scheckla.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None.
- 1.5 Call to Council and Staff for Non-Agenda Items

> Administrative Items

Mayor Griffith noted that the Tigard Central Business District Association was withdrawing their request for a hearing on the formation of an Economic Improvement District (EID) – Business Improvement District (BID).

Community Development Director Hendryx added that it is the intention of the Association to reformulate a plan with regard to efforts in the downtown. Mr. Hendryx advised that more than 33% of the business and property owners remonstrated against formation of the EID and the BID. The list of those who submitted remonstrances will be updated for the public.

2. PUBLIC HEARING – CONSIDER AN ORDINANCE LEVYING ASSESSMENTS AND BUSINESS TAX SURCHARGES FOR THE DOWNTOWN ECONOMIC IMPROVEMENT DISTRICT

No public hearing was conducted.

Mayor Griffith noted that the Tigard Central Business District Association was withdrawing their request for a hearing on the formation of an Economic Improvement District (EID) – Business Improvement District (BID).

Community Development Director Hendryx added that it is the intention of the Association to reformulate a plan with regard to efforts in the downtown. Mr. Hendryx advised that more than 33% of the business and property owners

remonstrated against formation of the EID and the BID. The list of those who submitted remonstrances will be updated for the public.

Mr. Tyler Ellenson, President of the Tigard Central Business District, advised that in reviewing the EID/BID remonstrances demographically, most were along Tigard and Burnham Streets. He noted that the downtown community should drive this plan. He said they would still be looking for a funding mechanism, but does not know how they will proceed at this point. He also noted that the membership of the TCBDA needs to be built up. He said he would like to go back and work with the downtown business owners and come forward with something that the community would support. In response to a question from Councilor Scheckla, Mr. Ellenson responded that there might be three positions opening on the board.

Councilor Patton commented that it appears that there is no cohesive group in the central business district at this time. She suggested that the focus be shifted to membership.

There was discussion on the Council and City's role in supporting an upgrade to the downtown area, which has been an ongoing effort for many years. It was noted that there needs to be a more collaborative approach to an upgrade among the City, downtown property and business owners. Perhaps the commuter rail will also help the downtown and provide opportunities for funding.

City Attorney Ramis advised that no Council motion is needed at this point.

Councilor Scheckla questioned the amount of time devoted by the City Staff on this matter. In response, Community Development Director Hendryx noted that this has been a City Council goal that staff has been working on for the last several years. Councilor Patton added that she wanted to make it clear that this matter had been before the City Council for a long period of time. She noted that the City Council knew the staff was providing assistance to the efforts in the downtown.

- > EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:00 p.m. to discuss real estate transactions and pending litigation under ORS 192.660(1)(e) and (h).

Executive Session adjourned at 7:20 p.m.

Council Meeting convened at 7:30 p.m.

3. VISITOR'S AGENDA

- Donald Meyers, a Tigard business owner in the downtown area addressed the City Council. He said he supported the TCBDA's efforts. He disagreed with Councilor

Scheckla's suggestion that a fee be charged in the future for a similar effort. Mr. Meyers noted that improvements to the downtown would be of benefit to the entire City. In response to a question from Councilor Scheckla, Mr. Meyers said he thought the Chamber of Commerce should participate in downtown revitalization.

- Carl Johnson, 8965 SW Burnham Street, Tigard, Oregon submitted written comments to the City Council. He advised he objected to the formation of the Economic and Business Improvement Districts. He noted that the goal was admirable with regard to enhancing the downtown. He advised that a good start would probably be with the coming of the light rail. A copy of Mr. Johnson's August 14 letter is on file with the City Recorder.

4. CONSENT AGENDA: Motion by Councilor Scheckla, seconded by Councilor Dirksen to approve the Consent Agenda.

- 4.1 Approve Council Minutes: June 12 and 19, 2001
- 4.2 Receive & File:
 - a. Council Calendar
 - b. Tentative Agenda
- 4.3 Approve Budget Amendment #3 to the Fiscal Year 2001-2002 Budget to Appropriate a State of Oregon Grant in the Amount of \$250,000 for Improvements to Cook Park – Resolution No. 01-51
- 4.4 Authorize the Crime Prevention Officer to Attend the Crime Free Conference 2001
- 4.5 Local Contract Review Board
 - a. Waive Purchasing Rule 70.20(1) and Approve Proposal for the Conceptual Design and Construction of an Architectural Model of the New Library to BML Architects – Resolution No. 01-52

The motion was adopted by a unanimous of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

5. CONTINUATION OF QUASI-JUDICIAL PUBLIC HEARING – CONSIDER THE APPEAL OF THE BLUE HERON PARK SUBDIVISION (SUB 2001-00001, PDR 2001-00001, ZON 2001-0002, SLR 2001-00003, VAR 2001-00002)

ITEM ON APPEAL: On June 11, 2001, the Planning Commission denied a request for approval of an 18-lot subdivision on 4.15 acres. The lots are to be developed with attached single-family homes. Lot sizes within the development average just over 3,800 square feet. Development is to be clustered on the west side of the development site, allowing for the preservation and enhancement of the pond, wetland, and stream area on the eastern portion of the property. A sensitive lands review is required for the development due to the presence of steep slopes, a wetland, and a natural drainageway on the site. On June 22, 2001 an appeal was filed regarding the Planning Commission's denial of the project. **LOCATION:** 12450 SW Walnut Street; WCTM 2S103BC, Tax Lot 3900. The project site is located on the south side of SW Walnut Street, opposite of SW 124th Avenue and west of SW 121st Avenue. **ZONE:** R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. **REVIEW CRITERIA BEING APPEALED:** Community Development Code Chapter 18.390.

- a. Mayor Griffith continued the public hearing from July 24, 2001.
- b. Declarations or Challenges – The Mayor read the following:
 - Do any members of Council wish to report any ex parte contact or information gained outside the hearing, including any site visits?
 - Have all members familiarized themselves with the application?
 - Are there any challenges from the audience pertaining to the Council's jurisdiction to hear this matter or is there a challenge on the participation of any member of the Council?

Councilor Dirksen advised that he works with Planning Commissioner Glenn Mores and they discussed that the item would be reviewed by the City Council on appeal. Councilor Dirksen advised that his discussion with Commissioner Mores would not prejudice his decision on this item.

Councilor Scheckla noted that he has visited the site and walked along the property.

- c. Staff Report: Community Development Planning Manager Dick Bewersdorff reviewed the staff report, which is on file with the City Recorder. During the staff report, Councilor Scheckla asked who would make determinations regarding tree removal. Mr. Bewersdorff advised that each developer is asked to prepare a plan. Councilor Scheckla cautioned that the developer's plan

might be conservative. Mr. Bewersdorff said that staff reviews and approves tree removal plans.

d. Public Testimony:

Applicant's Presentation

Al Jeck, Urban Development Corporation, 9600 SW Oak Street, Suite 230, Portland, Oregon, 97223, was introduced as the representative for the applicant for the Blue Heron Park proposal. Also introduced were development team members: Matt Sprague, Project Engineer from Alpha Engineering, 9600 SW Oak Street, Suite 230, Portland, Oregon 97223 and Wetlands Biologist Martin Shott, Shott & Associates, 11977 S. Toliver Road, Molalla, Oregon 97038.

Mr. Jeck advised the proposed project meets or exceeds Code requirements. He said he understands the concerns of the neighbors, but did not think the project would adversely affect them. He added that the applicant wants to be responsive to the neighbors' concerns.

Mr. Matt Sprague gave a presentation showing the scope of the project. He described the design of the 18 units and identified wetland areas. Units will be between 1700-2000 square feet, with a 30-foot width. He reviewed the plan to preserve trees. The area is to be landscaped and he pointed out the hammerhead street design. He also noted the location of the pedestrian pathway. Mr. Sprague advised that additional buffers at the site boundaries would exceed what is required for a planned development.

Mr. Sprague reviewed the project issues with a PowerPoint presentation. A copy of this presentation is on file with the City Recorder. Mr. Sprague said the staff report was good.

The PowerPoint presentation outlined the vicinity plan, the existing conditions plan, and the site plan. Project issues were listed, including the following:

- Strong staff recommendation
- Very few issues of concern in staff report
- 3 of 7 Commissioners voted in favor of the development
- No specific criteria were identified for denial
- Project provides many important benefits to the City
- Specific neighborhood concerns

Mr. Sprague's review of benefits were listed as follows:

- Enhancement of degraded wetlands and buffer area
- Innovative water quality and detention facility
- Preservation of large trees and tree canopy
- Design minimizes impact on sensitive natural areas
- Attractive streetscape and entry design
- Enhanced architectural features and construction materials
- Provides utility easement for the City

The tree preservation plans were reviewed. It was noted that this was not just a wetland enhancement but also addressed the riparian corridor and upland species. Mr. Sprague emphasized that 61% of the trees are saved on the developable land. He explained that the density bonus allowed by Code was 1% of every 2% of canopy preserved, up to a maximum of 20%. Mr. Sprague also noted that all developable land on the property is not slated for development (see land type comparisons slides on the PowerPoint presentation).

In response to a question from Councilor Dirksen, Mr. Sprague advised that the trees planted for screening purposes are small, one- to two-year old trees.

Councilor Dirksen referenced the screening issues (privacy) expressed by the neighbors and commented that some buildings will not be screened.

Mr. Sprague, who noted that there was a driveway around a tree island, reviewed streetscape plans. These trees appear to be in good condition.

Mr. Sprague reviewed the architectural features for the building structures. This includes covered front porches with decorative posts and arbors, front gables that break up the building mass, distinctive materials and building treatments. The materials reflect harmony with the natural surroundings. Mr. Sprague noted that a utility easement would be designated to accommodate sewer services to nearby properties. Development Review Engineer Brian Rager confirmed that the easement is needed for future sewer connections.

Mr. Sprague reviewed the neighborhood concerns with regard to:

- Traffic – with the improvements to Walnut Street, there is an additional traffic light at 121st Avenue and Gaarde Street, which will provide for more breaks in traffic for vehicles to enter and exit the site. Councilor Scheckla asked about the possibility of requiring a right-turn only from

the site. Mr. Rager said he would not recommend a right-turn only noting that the predominant movement will be to the east and the volumes would not warrant such a restriction.

It was noted that there would be a sign to the east of the site, warning of the new access at 124th.

- Noise – Mr. Sprague advised that the gate was removed from the plans because of noise concerns. Another noise mitigation proposal was for a “good-neighbor fence” to be built along some of the property; this will also provide additional privacy.
- Parking – There will be a sidewalk on one side of the street. Each home will have two-car garage, with two parking spaces in front, which meets Code requirements.
- Tree Removal – The applicant will retain as many trees as possible. There will be an arborist on site to minimize impacts to trees.
- Pond Maintenance – Maintenance has been addressed by designing a pond that will require little or no maintenance.
- Density Issues – Detailed information was outlined in the PowerPoint presentation. (See Page Nos. 10 and 11 of the presentation on file with the City Recorder).
- Consistency with surrounding development – Mr. Sprague said the proposed development is consistent with surrounding housing types and showed several slides of the variety of existing housing in the area. The price range of the homes in the new development will be between \$180,000 – 220,000.
- Privacy – Mr. Sprague noted that the Code provisions have been met and additional steps have been taken. He said they were preserving as many trees along the boundary as possible. He referred to the increased side-yard setbacks, adding an extra buffer in some locations.

Councilor Patton questioned whether the applicant had considered more fencing than currently proposed. Mr. Sprague said they had discussed fencing, but were unclear as to what issues the neighbors still needed to have addressed.

In response to a question from Mayor Griffith, Mr. Sprague advised that the construction timeline for this project is not known. He noted that this construction season is nearing an end. Mayor Griffith said that, if the proposal is approved and construction took place later in the year, erosion control would be a consideration.

Councilor Dirksen asked Mr. Sprague to show where the Kessler property was located. Mr. Sprague indicated the location on a display map.

In response to a question from Councilor Moore, Mr. Bewersdorff advised that this is a Type II decision. The property could provide for development of 15- to 16-single family units. Mr. Sprague commented that it would not be possible to place the maximum number of single family units on this property because Code requirements could not be met.

Mr. Rager advised that Tualatin Valley Fire & Rescue Department has accepted the proposed plan.

Council Meeting recessed at 8:56 p.m.

Council Meeting reconvened at 9:06 p.m.

Opponents

- Jim Vandehey, 12430 SW Walnut Street, Tigard, OR 97223. Mr. Vandehey submitted his written comments to the City Council. He reviewed the history of this property.

A copy of Mr. Vandehey's written testimony is on file with the City Recorder. His issues included whether or not this property falls under the requirements for a flag lot, livability, and the negative impact to the value of adjacent properties. Mr. Vandehey expressed concerns with additional traffic that would be generated by the development. He stated the increased traffic would be detrimental to livability, property values, and future salability. He reviewed several issues regarding an illegal fill on the property. He objected to small lot sizes and the density transfer allowed by using wetlands, since the wetland area is not buildable. He noted that there were more than 50 considerations that needed to be satisfied on this conditional use application.

Mayor Griffith asked a question with regard to fill. Mr. Rager responded that a soils report was done. The report will be updated as needed and as the property is developed.

- Margie Kessler, 12425 SW Alberta Street, Tigard, Oregon 97223. Ms. Kessler submitted written comments outlining her testimony, which is on file with the City Recorder.

Ms. Kessler also referred to a model constructed to illustrate the scale of the proposed structures and their vicinity to her home. She noted that because her home is situated at a lower point in the landscape, the new construction would be the equivalent to having a three-story structure adjacent to her property. Ms. Kessler also referred to an aerial-view map. She cited that some trees were not listed in the tree inventory.

Ms. Kessler advised that she does not believe the proposed design is compatible with the surrounding property. She questioned the good-neighbor fence and who would be responsible for maintaining it. She noted the need for continuous fencing around this property. Ms. Kessler suggested that the proposal be restricted to 12 units so more trees could be saved. Ms. Kessler noted she was concerned about damage to her trees when others were removed.

Ms. Kessler summarized and said that the proposed application violated the:

- Comprehensive Plan, by diminishing the quality of life of existing neighbors and their privacy.
- residential zoning code (18.510.010), by not protecting the livability of existing neighborhoods.
- Tigard Vision Statement, by not protecting the existing character and livability of an established area and not preserving and protecting aesthetic qualities valued by those who live and work in Tigard.

Copies of the photographs shown by Ms. Kessler during her presentation are on file with the City Recorder.

- Sherry Murphy, 12470 SW Walnut, Tigard, Oregon, 97223. Ms. Murphy expressed concern that fir trees on the property may be damaged. Ms. Murphy testified that her home is the single-story home adjacent to the entrance of the proposed Blue Heron development.

It concerned her that quality and reason had seemed to have taken a "back seat to maximum profit." She said it was not a bad thing for a property owner to profit from the use of his/her property, but profit

should not occur at the expense of causing an irreversible, negative impact to existing residents, fowl, wildlife habitat, forestation, nature, drainage ways.

She expressed concern about the impact of construction traffic on the three Douglas fir trees that are two feet from the property line. She said that Alpha Engineering believes that additional compacting around these trees will help save the trees. However, Ms. Murphy said because fir trees are surface rooted, compacting would be detrimental. She was concerned that the trees may not show damage immediately and questioned what would happen if the damage became evident two years later. She noted that questions on saving trees, additional traffic noise, and sidewalk design for her side of the private street have been ignored.

Ms. Murphy noted that the trees in the median areas are not surrounded by asphalt at this time. These trees have ferns and hostas planted under them.

Ms. Murphy said she purchased her home 12 years ago at this location because of the treed setting. She objected to the loss of her privacy with the two-story structures proposed for this development. She noted a definite need for privacy fencing.

Ms. Murphy advised that the developer's density bonus should be denied because the request is based on restricted wetlands and unbuildable areas. Also reforestation issues should be addressed to safeguard neighbors' property. She said the plan should be modified so that it would fit into the Tigard Vision Statement, which the developer says is not applicable.

The developer should be requested to do an updated street sight-clearance and volume speed traffic study on Walnut Street beginning with the advent of school in September. The developer should be requested to focus not only on profit but also on community character of the existing neighborhoods and the quality of life for those residents. She said the developer could meet Metro's standards for density with 12 units instead of 18. The City is not getting anything of value for additional density while Tigard residents adjacent to the development will end up "paying the price."

The City sewer is currently on Walnut Street and being utilized by neighbors. The pond and drainage is not a public use area and will never be a park setting or useful for any recreation.

- Carla Isaacson, 12520 SW Walnut Street, Tigard, Oregon 97223. Ms. Isaacson also testified with regard to concerns about removal of trees. She was concerned about noise generation that would adversely impact the neighborhood.
- Donna Cameron, 12490 SW Walnut Street, Tigard, Oregon 97223. Ms. Cameron asked the City Council uphold the Tigard Planning Commission's decision to deny the application. She noted that she has a letter on file with the City Council outlining her concerns with the density. Ms. Cameron that she would have three structures next to her property and referred to a site map. She expressed concern about protecting the trees on her property.

In response to a question from Councilor Scheckla, Mr. Bewersdorff noted that the City was meeting density requirements.

- Julie Rau, 12430 SW Walnut Street, Tigard, Oregon, 97223. Ms. Rau submitted her written testimony to the City Council. She referred to the Codes that had been cited in addition to the questionable density and zoning issues. She also noted unanimous opposition from the neighbors. She advised that it did not appear that the applicant was concerned about the impacts to the homeowners. She referred to the gates planned for the development, which she now understands will be removed. However, she said she did not understand why the applicant would have thought the gate would add value to the project.

She noted the close proximity of her home to the entrance/exit to the development and the amount of traffic that would pass by, which would affect the value of her home. She cited concern that the purpose of the project was solely for making as much profit as possible. She advised that the project would not enhance Tigard.

Ms. Rau referred to her objection to the Alpha Engineering proposal with regard to crime prevention and the suggestion/assumption that neighbors would be able to view the property and act as the Neighborhood Watch.

She noted the issues at stake, including loss of privacy, tree removal, and the integrity of the remaining trees, wildlife, wetlands, traffic, safety, and noise pollution. She asked that the City Council realize the negative impact to the established homeowners with nothing in return

from the applicant for the losses. Ms. Rau asked the City Council to deny the application.

- Mark Guz, 4753 NE 62nd Street, Portland, Oregon. Mr. Guz testified that he was a friend and associate of people in the neighborhood. He noted with the development would come pollution from cars and fertilizers, which would impact water quality. He also noted concern about loss of privacy for the neighbors.
- Lee Hartfield, 12500 SW 124th Avenue, Tigard, Oregon 97223. Mr. Hartfield noted he was concerned for the safety of visitors and children. He noted speed issues with traffic on Walnut. He also noted that there was no provision for overflow parking.

Mayor Griffith polled the Council (per Council groundrules) noting the hour of the evening and whether the City Council wished to continue with the meeting. Consensus of Council was to proceed.

- Milt Fyre, 12121 SW Landsdowne, Tigard, Oregon 97223. Mr. Fyre noted his background, which included serving on the NPOs for two years and on the Planning Commission for ten years. He noted that he had lived 34 years in the neighborhood and recommended denial of the application.

Mr. Fyre said the purpose of the Comprehensive Plan was to maintain the quality of life. He referred to the use of wetlands in calculating the density transfer and issues with the property, which included steep slopes, a pond, and soil conditions. He said there was already a significant wetland environment present and the proposed enhancement in return for density transfer should not be considered. He said the proposal represented twice as many homes in this area, which would translate to twice as many vehicle trips. He contended that the development is not consistent with the surrounding area. Mr. Fyre urged the City Council to take a hard look at the trade offered for a sewer easement, which should actually be a condition of approval.

Mr. Fyre said the property should be developed, but not as a Planned Development. He said single-family housing would be more consistent with the area than a Planned Development.

In response to a question to a question from Councilor Scheckla, Mr. Fyre advised that density bonus provisions were initially set up to

preserve open space. He noted that the proposal for density transfer was based on property that could not be built on regardless.

In response to a question from Councilor Patton where she asked Mr. Fyre if he disagreed with the concept of Planned Developments, Mr. Fyre responded that if the City would gain open space, then a density transfer was positive. He said the City does not gain anything in this instance but increased density.

In response to a question from Councilor Scheckla, Mr. Fyre said he had mixed feelings about the issues of trees. He noted that when trees are taken down then the existing trees are subject to windthrow.

Rebuttal

Following are the highlights of Mr. Matt Sprague's rebuttal to the above testimony:

- Mr. Sprague took issue with concerns about whether this was a flag lot. He noted that it had been determined that this property was appropriate for a planned development.
- He noted that the tree preservation being proposed for the number units being proposed is "incredible."
- He noted the developer would work to ensure minimal impact.
- He advised that the City arborist has not mentioned any negatives with regard to the proposal. The Plan had been revised to reflect the suggestions by the City arborist. He advised that the developer would work diligently with the arborist.
- He referred to the canopy and tree preservation calculations that were questioned. Exact calculations will not be known until a survey has been completed. He noted that tree canopy calculations are only for trees greater than 12 inches on the applicant's site.
- He noted the applicant was trying to be responsive to the neighbors from the concerns that were heard at the Planning Commission.
- He said the applicant was willing to provide additional buffering.
- He referred to concerns by Ms. Kessler about trees at the south boundary line. He noted two trees are considered to be diseased.
- He referred to the south boundary and fencing and said this area was used by wildlife and that it would make more sense to fence the backyard.
- He said that fewer units would not mean that fewer trees would need to be removed.
- He noted private outdoor space was provided behind all of the units.
- He expects that parents would take their children to the nearby park.

- He noted that their studies did not indicate that this proposal would adversely impact the value of adjacent properties. The proposal was for “nice, attached single-family clustered” homes.
- He noted that Ms. Kessler was concerned that headlights would reflect into her kitchen window. He said this would not occur.
- He referred to comments about heavy equipment accessing the property and potential damage to the trees; the arborist had not issued concerns about this point.
- He shared with the Council a picture of Ms. Kessler’s home as viewed from the applicant’s site.
- He noted that the applicant is not only preserving sensitive lands but a quarter of the property that is being preserved is considered developable land.
- The applicant is providing open space areas as required by the City.
- He noted that the proposed development would be consistent with the homes that now exist in the area.
- He reviewed screening proposed for two adjacent properties. He referred to concerns to the north for additional screening, fencing and understory plantings.
- He noted that Mr. Fyre stated he had lived in the neighborhood for 34 years, but Mr. Fyre also constructed a development in the area. Alpha Engineering assisted Mr. Fyre with his development.
- He reviewed the benefits that were offered from the site design.

In response to a question from Mayor Griffith, Mr. Sprague advised that the homeowner’s association would maintain the proposed pond, which would require infrequent maintenance.

Mr. Sprague noted that a good-neighbor fence was proposed and described how this six-foot high wooden fence would be constructed.

In response to a question from Mayor Griffith, Mr. Sprague agreed with Ms. Kessler that in an area that she cited, the majority of trees would be removed.

Mr. Sprague noted that there would be a biofiltration area where trees will be planted.

In response to a question from Councilor Patton, Mr. Sprague noted that a reduction of 18 units to 16 would not make much difference to the impact to the property.

In response to a question from Councilor Scheckla with regard to allowing more parking, Mr. Bewersdorff advised that the applicant has met the parking requirements.

Mr. Bewersdorff reviewed the concerns about whether or not the applicant's property is a flag lot. He noted that the Planned Development requirements preclude lot-size requirements.

- e. Staff Recommendation: Staff recommended approval of the proposed application with conditions.
- f. Mayor Griffith closed the Public Hearing.
- h. Council Consideration:

Councilor Scheckla suggested that deliberation be delayed as he would like time to review the issues.

Councilor Patton advised that she had reviewed a large amount of information received previously and she would be comfortable with making a decision at this time. The Council proceeded with consideration.

Councilor Scheckla noted that in walking the property, he now has different ideas about the proposal.

Councilor Dirksen advised that he had looked at this application trying to find justification to reject the proposal based on Code provisions but could not find any such provisions. He noted that he was concerned with privacy issues. He recommended a condition that all of the property line be fenced on the north, west and south sides. He noted that he would like to see larger trees preserved. Councilor Dirksen noted concern about construction activity impacts on existing trees and referred to a recent project in the City where trees were damaged due to construction. He recommended that there be punitive damages imposed if existing trees are not preserved or some sort of bond should be required.

Councilor Moore noted that the applicant has met the provisions of the Code. He referred to the arguments presented about quality of life issues but advised that these types of arguments could be said for any proposed development. He also noted he knew what it was like to lose privacy because of a new development and acknowledged that privacy will be diminished for existing neighbors. He said that if a final decision was issued based on quality of life criteria, the matter would most likely go to the Land Use Board of Appeals,

which would remand the issue to the City. This would only mean that the development would be delayed. He said he supported Councilor Dirksen's recommendations and he also supports reversing the Planning Commission's denial of this development.

In response to a question from Councilor Scheckla whether or not a certified, independent arborist should be used to review the application, City Attorney Ramis noted that they could continue the hearing to bring more evidence in to address this specific idea. Councilor Moore noted that the applicant supplied information from a certified arborist and also the City's arborist has looked at the proposal. Councilor Scheckla expressed concern that the arborist be independent. Councilor Dirksen noted that the City's forester was stricter and had studied the property in an unbiased fashion. Councilor Patton noted that she felt confident with City Forester Matt Stine's recommendations.

Councilor Patton agreed with Councilor Dirksen with regard to scrutinizing the Code to determine if the application was in compliance with all applicable requirements. She advised that she agrees with the staff report. She noted that she sympathizes with the concerns of the neighbors about the loss of privacy. She advised that she would like to see fencing on all units abutting adjacent properties. Councilor Patton also noted concerns with safety with regard to Walnut Street, especially at the entrance/exit of the development. She would like some investigation as to whether any additional traffic mitigation could be set as a condition. She agreed that the Planning Commission's denial should be reversed as the Planned Development proposal meets Code requirements. With regard to the request for the density bonus, she said that the reduction from 18 to 16 units does not appear to make a significant difference to the impacts on the neighbors. Councilor Dirksen noted he agreed with Councilor Patton on this point.

Mr. Rager advised that the traffic study, which was done on May 8, 2000, at 124th and Walnut indicated that there were no traffic safety issues and nothing further would be warranted. He advised that the sight distance to the east was somewhat of a problem (a dip in the road) and the sight distance to the west was acceptable. He also noted that Washington County will be improving Walnut Street in the near future. From the period 1996-98, there were four accidents reported at 124th and Walnut, which is not considered to be excessive.

Councilor Dirksen noted his concern about protecting trees due to careless construction. Councilor Moore commented that some damage done may not show up for several years.

Mr. Bewersdorff reviewed the conditions as discussed by Council:

1. The property is to be fenced behind and next to all dwelling units with the exception of open areas.
2. Tree plantings in all buffer areas should be done with 2-inch caliper trees.
3. The developer should be required to put in an escrow account the value of every 12-inch tree that is to be retained for the period of construction. He noted that in other cases this period has been for seven years. He said the "period of construction" would mean during the construction of the streets and homes.

In response to a question from Councilor Patton with regard to whether trees on adjacent properties could be included, Mr. Bewersdorff advised that conditions could be made specific with regard to certain trees.

The escrow account would contain funds to cover the value of the 12-inch caliper trees as determined by the City forester. The funds would be paid to the City based on the value of trees lost. There is a methodology used to determine the value of the trees and the replacement by caliper inches.

It was noted that the escrow account may be a large sum.

With regard to a question from Councilor Scheckla, City Attorney Ramis noted that Measure 7 is not being enforced at this time, but if ruled to be a valid limitation on local government, Measure 7 will affect all decisions, including this one.

With regard to the traffic condition, Councilor Patton reiterated that she would like to see signage or additional efforts made to warn that caution is needed for the intersection. She noted that this project would add a private drive and a sidewalk to a major collector street. She expressed concern that drivers should be able to anticipate that there may be people crossing the road. Mr. Rager acknowledged that this situation is similar to other intersections although one of the legs happens to be a private street. There is a possibility that the applicant could be required to stripe a crosswalk. After discussion, it was determined that Mr. Rager would review the Manual on Uniform Traffic Control Devices to determine what safety measures could be required (such as striping a crosswalk or signage).

Councilor Moore indicated that these traffic conditions may be temporary solutions because the County planned improvements on Walnut Street within the next 12-18 months. Councilor Patton noted that she did not think this would be a temporary solution for entering and exiting 124th Avenue at this location. Councilor Patton said she would be comfortable in delegating to staff the task of writing the proposed recommendation for Council review.

Councilor Moore noted his concern about the amount of dollars that may be required for the escrow account for the trees. City Attorney Ramis noted that if the amount is not workable, then the applicant could seek an amendment to this condition through a hearing process.

Motion by Councilor Dirksen, seconded by Councilor Moore, to overturn the Planning Commission's denial dependant upon the conditions discussed tonight including additional fencing, increasing requirements of the tree size for new trees, the traffic issue to be reviewed by the City Engineer, and the escrow account for tree damage. The specifics of these conditions are to be defined by staff and then considered by the City Council.

The motion was approved by majority vote (4-1) of City Council present:

Mayor Griffith -	Yes
Councilor Dirksen -	Yes
Councilor Moore -	Yes
Councilor Patton -	Yes
Councilor Scheckla -	No

6. COUNCIL LIAISON REPORTS: None.

7. NON AGENDA ITEMS: None.

> STUDY SESSION

City Manager Monahan reviewed the following information, which was distributed to the City Council:

- A loan has been approved for the City of Tigard from the Oregon Economic and Community Development Department for Cook Park Improvements in the amount of \$2,290,248.
- Attorney Ed Sullivan requested a waiver of conflict with regard to giving advice to a homeowners association in the Bull Mountain area. (A copy of Mr. Sullivan's e-mail communication outlining his request is on file with the City Recorder.)

Consensus of the City Council was to grant the waiver with the provision that if the situation develops into litigation against the City, then the waiver would not continue to be acceptable to the City Council. In addition, language would be included in a letter to Mr. Sullivan that his representation of these individuals would be all right at the local level; however, if there is action to be appealed, then the City Council would not be in favor of continuing to approve the waiver.

- A joint meeting with the City of Tualatin was tentatively scheduled from 6 – 8 p.m. on September 17, 2001, at the Tualatin City Hall. A tentative agenda topic included a discussion about a bridge over the Tualatin River. Due to some scheduling conflicts, another date will be sought.
- Council received a memorandum (on file with the City Recorder) from Kathy Kaatz of the Public Works Department regarding the Water Conservation Calendar 2002 . Ms. Kaatz, in her memorandum, asked the City Council if they would allow their names and signatures to be included as part of the calendar to acknowledge the cooperative efforts of the teachers who allowed the City to bring its water conservation message and education to the classroom. Council consensus was to give the authorization requested.
- Information pertaining to the August 21, 2001, City Council Agenda Item No. 7, Solid Waste Rate Policy Clarification and Feedback, was placed in the City Council mail packet.
- Mayor Griffith advised he testified at a recent hearing with regard proposed redistricting boundary changes. He requested that Tigard, King City, and Durham remain together in a legislative district. He advised he does not know where the district lines will eventually be drawn.
- Council members and staff should be cognizant about making noise, such as rattling papers, when television cameras are recording the meeting.
- Councilor Scheckla noted concerns about the recent events with "Camp Dignity," which is a camp where individuals are living who are homeless. He said there has been increased presence of homeless persons in the Fanno Creek Park area.

8. EXECUTIVE SESSION: Canceled.

9. ADJOURNMENT: 11:40 p.m.

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: _____

I:\ADM\CATHY\CCM010814.DOC

AGENDA ITEM # _____
FOR AGENDA OF September 25, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Dedication of Reserve Strips as Public Rights-of-Way

PREPARED BY: John Hadley DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should City Council approve the dedication of existing reserve strips as public rights-of-way?

STAFF RECOMMENDATION

Staff recommends, by motion, approval of the attached resolution authorizing the dedications.

INFORMATION SUMMARY

The Community Development Code requires the dedication of reserve strips at the ends of streets that are to be extended later. When the streets are extended, it is necessary to dedicate the reserve strips as public rights-of-way.

Plats have been approved by the City and filed with Washington County extending the streets, but the reserve strips were not dedicated as rights-of-way. These reserve strips need to be dedicated as public rights-of-way for the rights-of-way to be continuous.

The attached resolution authorizes the City Manager to dedicate the reserve strips as public rights-of-way so that the street extensions can be completed.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Resolution authorizing the City Manager to dedicate the reserve strips as public rights-of-way.
Dedication Deed with attached Exhibits 1 through 5.

FISCAL NOTES

No cost to the City.

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY A DEDICATION DEED TRANSFERRING TITLE OF RESERVE STRIPS TO THE PUBLIC FOR STREET RIGHTS-OF-WAY PURPOSES.

WHEREAS, reserve access strips have been dedicated to the City of Tigard at the ends of various streets; and

WHEREAS, when streets are extended, the reserve strips need to be dedicated to the public for street rights-of-way purposes; and

WHEREAS, street extensions have been authorized by the City in the locations shown in Exhibits “2, 3, 4, and 5.”

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council hereby authorizes the City Manager to sign a deed dedicating the reserve access strips to the public for street purposes.

SECTION 2: A copy of the dedication deed with Exhibits “1” through “5” is attached hereto and incorporated herein by this reference.

PASSED: This _____ day of _____ 2001.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

\\tig333\usr\depts\citywide\res\various street plug2 res.doc

RESOLUTION NO. 01-____

RETURN RECORDED DOCUMENT TO:
CITY HALL RECORDS DEPARTMENT,
CITY OF TIGARD
13125 SW Hall Blvd.
Tigard, OR 97223

CORPORATION

File No. _____

DEDICATION DEED
FOR ROAD OR STREET PURPOSES

City of Tigard does hereby dedicate to the public a perpetual right-of-way for street, road, and utility purposes on, over, across, under, along, and within the following described real properties in Washington County, Oregon:

See Attached Exhibits “1” through “5”

To have and to hold the above-described and dedicated rights unto the public forever for uses and purposes herein above stated.

The grantors hereby covenant that they are the owner in fee simple and the property is free of all liens and encumbrances, they have good and legal right to grant their right above-described, and they will pay all taxes and assessments due and owing on the property.

The true consideration for this conveyance is \$ 0.00. However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration.

IN WITNESS WHEREOF, I hereunto set my hand on this _____ day of _____, 2001.

City of Tigard
Name of Corporation
13125 SW Hall Blvd.
Address
Tigard Or., 97223

William A. Monahan
City Manager
Title

Signature

Tax Statement Mailing Address *(if different from above)*

Title

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____ (date) by William A. Monahan, as City Manager of the City of Tigard.

Notary's Signature
My Commission Expires: _____

Accepted on behalf of the City of Tigard this _____ day of _____, 2001.

City Engineer

EXHIBIT 1

The following real property situated in the City of Tigard, Washington County, Oregon, described as follows:

Being that Parcel described as Tract "B" Pebblecreek as recorded in Book 90 Page 12 and 13; of the Washington County Subdivision Records; and

Being that Parcel described as Tract "EE" Morning Hill No. 8 as recorded in Book 79 Page 38 through 40; Washington County Subdivision Records and

Being those Parcels described as Tract "A, B AND C" Hillshire as recorded in Book 85 Page 45 through 50; Washington County Subdivision Records and

Being that Parcel described as Tract "A" Woodford Estates as recorded in Book 800 Page 16 through 18 Washington County Subdivision Records

EXHIBIT 2

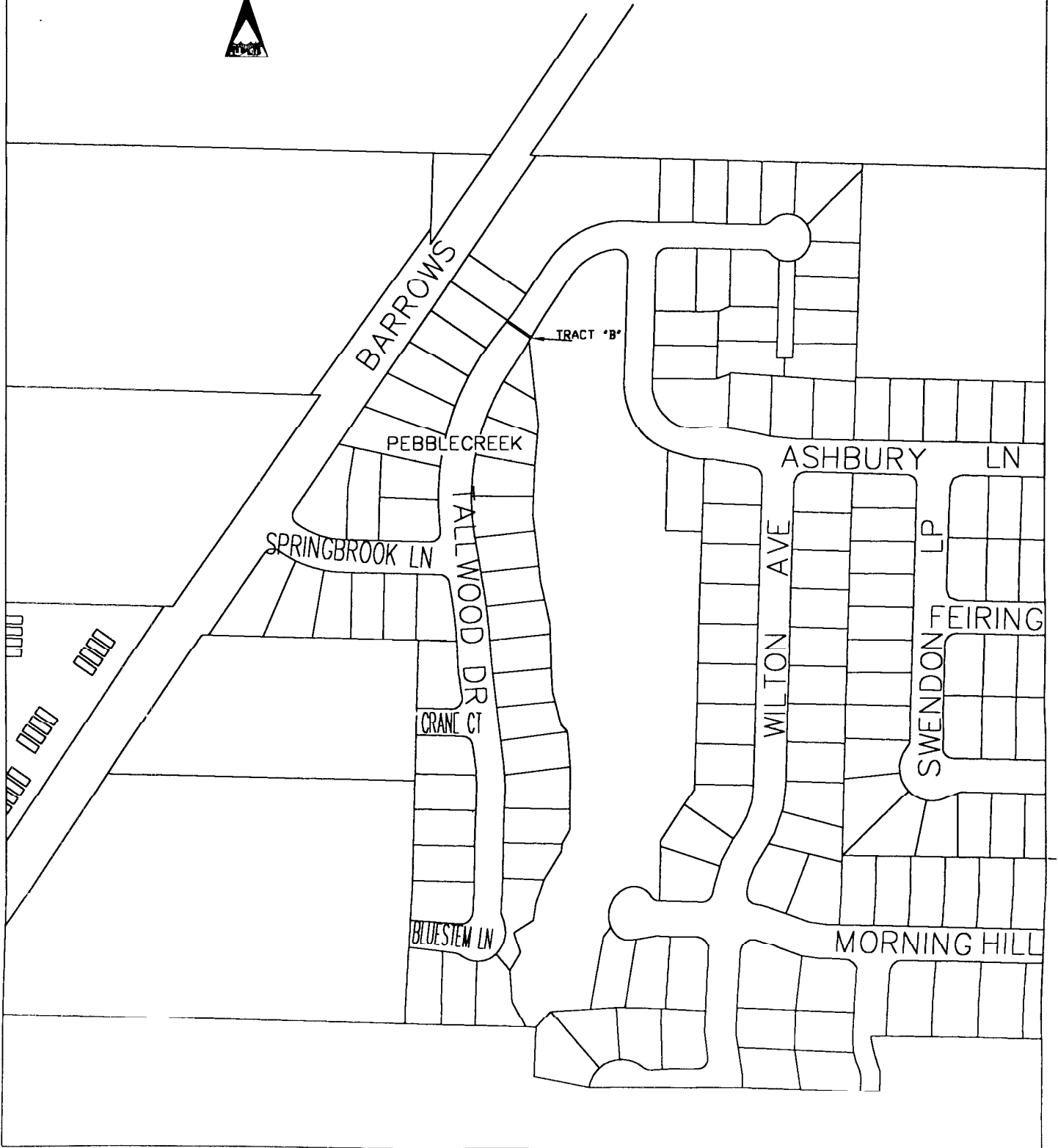
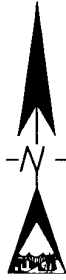


EXHIBIT 3

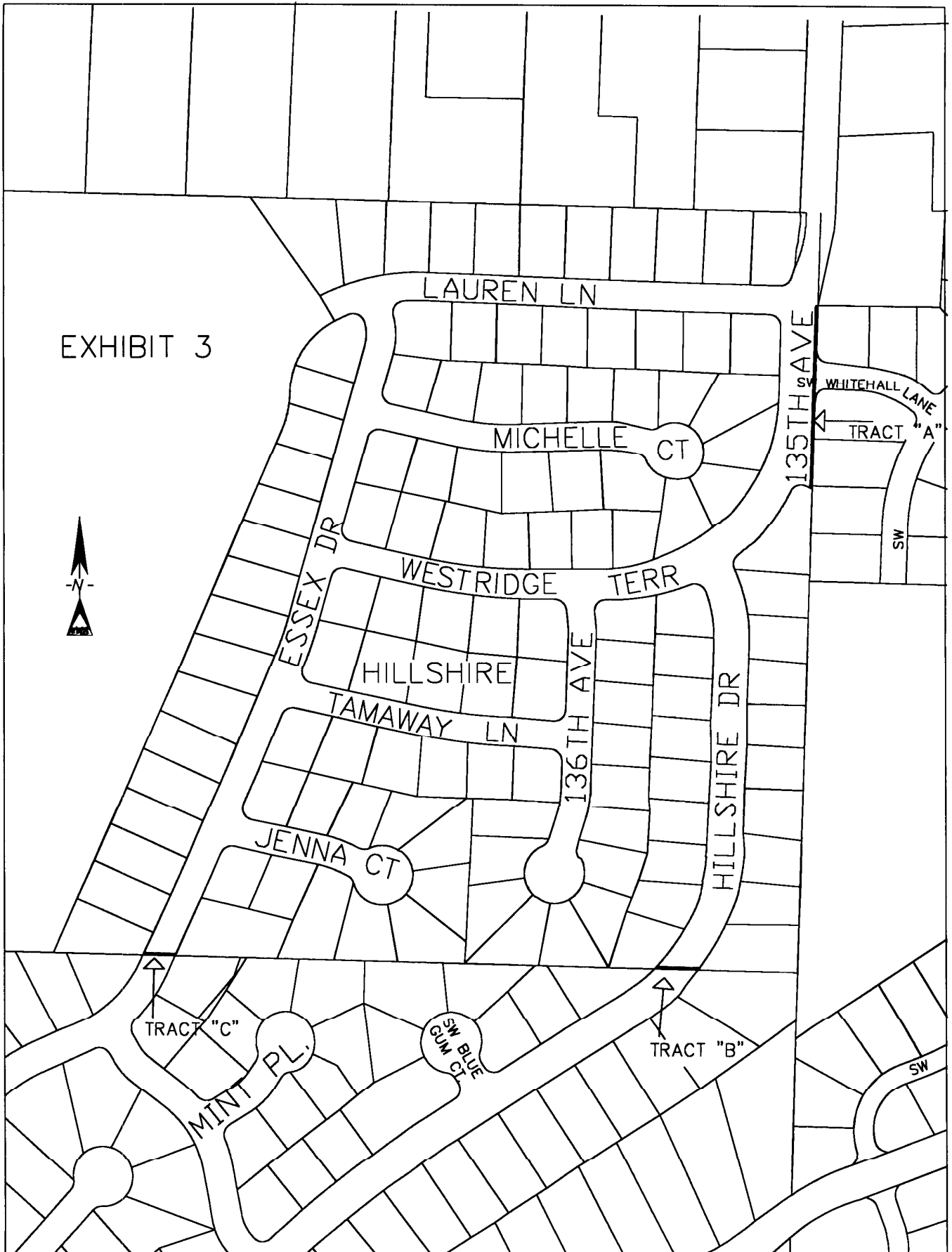
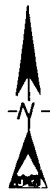


EXHIBIT 4



EXHIBIT 5



AGENDA ITEM # _____
FOR AGENDA OF 9-25-01

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Approve Policies for Solid Waste Rate Actions

PREPARED BY: Loreen Mills  DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Confirm Council policies for solid waste rate actions.

STAFF RECOMMENDATION

Approved resolution to confirm Council's policies for solid waste rate actions.

INFORMATION SUMMARY

City Council has their solid waste rate policies set through resolution, the first of which was approved in 1996. At the 9/21/01 Council workshop, staff and haulers requested clarification of Council's policies in light of the current rate review process and changes in the solid waste industry. The attached resolution synthesizes Council direction from the 21st by clarifying their policies for solid waste rate setting.

The attached resolution has been reviewed and approved by the City Attorney's office. It sets forth the following:

- ❖ Council's position for service-type rate subsidies to be reduced over the next seven years (if possible);
- ❖ clarification of how the operating margin, or rate of return, will be calculated;
- ❖ any rate review proceedings will be reviewed based on a 10% rate of return margin in the aggregate; and
- ❖ review process for annual haulers' financial reports.

OTHER ALTERNATIVES CONSIDERED

N/A

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Resolution confirming Council solid waste rate policies.

FISCAL NOTES

N/A

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-

A RESOLUTION OF THE TIGARD CITY COUNCIL FORMALIZING COUNCIL POLICIES AFFECTING SOLID WASTE RATE ACTIONS AND RESCINDING RESOLUTION NO. 96-03

WHEREAS, the Tigard City Council desires to manage solid waste rates in a manner which is consistent with the Solid Waste Management Ordinance (TMC 11.04); and

WHEREAS, the Solid Waste Industry and recycling programs and markets continue to rapidly change; and

WHEREAS, the Solid Waste Industry is being forced to change by multiple court challenges region-wide which question continuing the past rate practice of commercial rates subsidizing the residential service rates; and

WHEREAS, the Tigard City Council wishes to update its established policies for solid waste management to insure rates that are just, fair, reasonable and adequate to provide ongoing necessary service to the public; and

WHEREAS, the Tigard City Council desires to rescind Resolution No. 96-03 and adopt updated policies to meet the challenges faced in providing solid waste services for the citizens of Tigard.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council hereby rescinds Resolution No. 96-03 in its entirety.

SECTION 2: The Tigard City Council will use the following policy when it reviews any changes to the solid waste rates in an effort to reduce the commercial subsidy of residential service rates and move to rates that are based on cost of service over a period of time:

SERVICE-TYPE RATE SUBSIDY POLICY

It is the desire of the Tigard City Council to eventually have solid waste rates be profitable by each service type (i.e., cart, container, drop box). Since there currently exists a commercial (container) subsidy of the residential (cart) rates and drop box rates, a phased-in reduction of the subsidy is anticipated within the next seven years. The subsidy will be reduced at increments acceptable to the City Council.

SECTION 3: The Finance Director, or designee, will use the following policy when computing the solid waste haulers' rate of return:

OPERATING MARGIN/RATE OF RETURN POLICY

The Operating Margin, or rate of return, will be calculated on the before tax net profit as a percentage of gross revenue. The "profit rate" review will be based on the aggregate pre-tax net income as a percentage of the aggregate gross revenues of the franchised haulers. The City Council shall consider an adjustment during rate review proceedings to provide a ten percent (10%) margin in the aggregate.

SECTION 4: **ANNUAL HAULERS' FINANCIAL REPORT REVIEW PROCEDURE**

The Finance Director, or designee, will review the solid waste haulers' annual financial reports and gather any clarifications deemed necessary from the haulers or their designated representatives each year. After being satisfied that the reports are complete and properly filled out in accordance with the instructions provided, the Finance Director, or designee, will determine the "profit rate" by the aggregate pre-tax net income of the haulers as a percentage of aggregate gross revenues.

The Finance Director, or designee, will then report the results to the City Manager, the Mayor and City Council. If the aggregate profit rate falls below eight percent (8%) the City Council shall consider an adjustment to provide a ten percent (10%) margin. If the aggregate profit rate exceeds twelve percent (12%), the City Council shall consider an adjustment downward to provide a ten percent (10%) margin.

EFFECTIVE DATE: This resolution will be effective on and after October 1, 2001.

PASSED: This _____ day of _____ 2001.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

AGENDA ITEM # _____
FOR AGENDA OF September 25, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Contract Award for the Construction of Embedded Crosswalk Lighting System on 121st Avenue (at Springwood Drive)

PREPARED BY: Vannie Nguyen DEPT HEAD OK: A.P. Duenas CITY MGR OK: Bill Monahan

ISSUE BEFORE THE COUNCIL

Shall the Local Contract Review Board approve the contract award for the construction of Embedded Crosswalk Lighting System on 121st Avenue (at Springwood Drive)?

STAFF RECOMMENDATION

Staff recommends that the Local Contract Review Board, by motion, approve the contract award to **R.J. Rouse Electric, Inc.** in the amount of **\$53,480.00**.

INFORMATION SUMMARY

In FY 1999-2000, the Capital Improvement Program proposed a pilot program to install embedded crosswalk lighting systems at three locations: Walnut Street (at Grant Avenue), 121st Avenue (at Katherine/Lynn Street) and 121st Avenue (at Springwood Drive). However, only one crosswalk lighting system on 121st Avenue (at Katherine/Lynn Street) was constructed in that fiscal year.

In FY 2000-01, the Capital Improvement Program proposed a project to install crosswalk lights at two locations: Walnut Street (at Grant Avenue) and Main Street (at existing bridge). Construction of this project was completed in February 2001. Installation of crosswalk lighting systems at these three locations has proved effective in protecting pedestrians from oncoming two-way traffic while crossing at the intersections. So far, the crosswalks have been widely used by students as well as the local community.

To complete the pilot program that was proposed in FY 1999-2000, this year's project proposes to install a lighted crosswalk on 121st Avenue (at Springwood Drive). This project was first advertised for bids on June 26, 2001. However, it was combined with the inlay/slurry work of the PMMP project. There were only two bids submitted at the bid opening on July 10, 2001. These bids were extremely high because the lighting work is a specialty item that can only be done by an electrical contractor. In the Council meeting of July 24, 2001, the Local Contract Review Board rejected all bid proposals.

Since then, staff prepared two separate bid documents for the PMMP and the Embedded Crosswalk Lighting projects. In the Council meeting of August 28, 2001, the Local Contract Review Board approved the contract award to Eagle Elsner, Inc. to construct the PMMP work.

The bid opening was conducted on September 4, 2001 for the Crosswalk Lighting System project. The bid results are:

R.J. Rouse Electric, Inc.	Tualatin, OR	\$53,480.00
Electrical Construction Co.	Albany, OR	\$60,600.00
Farwest Electric Co.	Vancouver, WA	\$77,321.00
Cherry City Electric Co.	Salem, OR	\$78,845.00
Engineer's Estimate		\$42,400

The lowest bid from R.J. Rouse Electric, Inc. is higher than the Engineer's estimate by approximately \$11,000. Staff's review of the bid tabulation sheet indicates that in addition to the installation of the lighting system, the electrical contractor has to stripe the crosswalk, reconstruct existing wheelchair ramp, sidewalk and curb, and relocate existing roadside signs. The unit bid prices for these items are higher than usual because the prime contractor has to sub-contract the roadway work to a different contractor. In addition, we have added overhead pole mounted flashers to augment the embedded lights. These flashers were not included in the original bid in July. This has added to the overall cost of the project.

OTHER ALTERNATIVES CONSIDERED

N/A

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

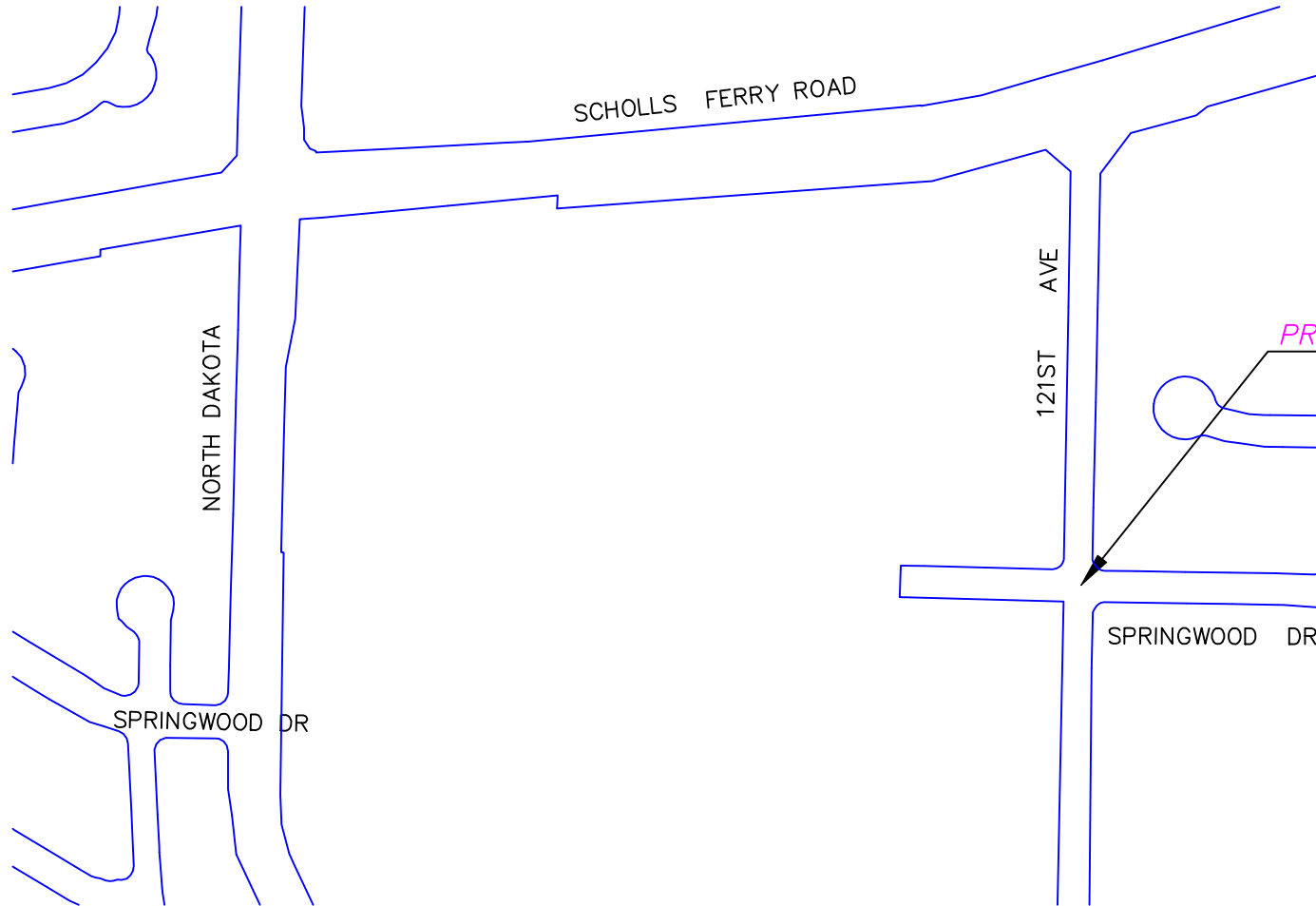
ATTACHMENT LIST

Project location map

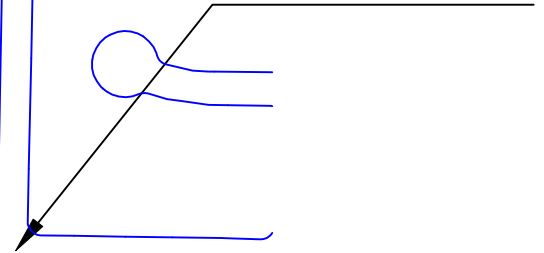
FISCAL NOTES

This project is funded from the State Gas Tax fund in the amount of \$40,000 in the FY 2001-02 CIP Embedded Crosswalk Lights. The low bid exceeds the budgeted amount by approximately \$13,500. The amount of \$13,500 will be funded from the State Gas Tax fund for the FY 2001-02 PMMP project. Due to lower bid price, funding for the PMMP project has \$18,000 remaining in the account.

The total amount of \$58,000 (\$40,000 plus \$18,000) is sufficient to award the contract of \$53,480.00 to R.J. Rouse Electric, Inc.



PROJECT LOCATION



AGENDA ITEM # _____
FOR AGENDA OF September 25, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Local Contract Review Board to award a Personal Sevices Contract for Electical Inspections and Plan Review to Clair Company.

PREPARED BY: Gary Lampella DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Local Contract Review Board review of selection of contract firm to provide electrical inspections and plan review.

STAFF RECOMMENDATION

Award a contract for the sum not to exceed \$30,000 to Clair Company for electrical inspections and plan review.

INFORMATION SUMMARY

Due to the considerable increase in construction activity and extended staff absences, the Building Division has had to rely on contract employees to keep up with the workload. This caused the budget line for contractual services to be overspent.

On July 10, 2001 Council granted a waiver of the contract rules for an amount not to exceed \$25,000 and/or until September 30, 2001. This allowed the Building Division to continue to use existing contractual services for electrical inspections and plan review until such time as Request for Proposals could be sent out and a contractor selected. This has been completed and a contract is ready to be developed and implemented by the first of October, 2001.

The rates for these services are as follows:

Electrical Plan Review - \$60.00/hr.

Electrical Inspections, Commercial - \$62.00/hr.

Electrical Inspections, Residential - \$60.00/hr.

Overtime - 1.5 times base rate

Mileage - \$0.42/mile

This allows the City to use Clair Company's services for approximately 400 hours. This should be adequate to cover electrical inspection and plan review in order to maintain service levels and fill in during staff absences. All work will be performed during regular business hours in order to avoid overtime costs.

OTHER ALTERNATIVES CONSIDERED

Hire additional staff.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

None

FISCAL NOTES

Maximum \$30,000 for FY 2001-02. This is budgeted from the dedicated Electrical Fund 220.

AGENDA ITEM # _____
FOR AGENDA OF September 25, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Finalize Formation of Sanitary Sewer Reimbursement District No. 20, Established to Install Sewers in SW Rose Vista Drive.

PREPARED BY: G. Berry DEPT HEAD OK A. Duenas CITY MGR OK W. Monahan

ISSUE BEFORE THE COUNCIL

Finalize the formation of Sanitary Sewer Reimbursement District No. 20, established to install a sewer in SW Rose Vista Drive.

STAFF RECOMMENDATION

Approve, by motion, the formation of Reimbursement District No. 20 as modified by the final City Engineer's Report.

INFORMATION SUMMARY

Council approved the formation of the Reimbursement District by Resolution 01-11 on February 27, 2001. Since then, construction of the improvements has been completed and final costs have been determined. The attached City Engineer's Report has been revised accordingly.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Not applicable.

ATTACHMENT LIST

Resolution No. 01-11, Establishing Sanitary Sewer Reimbursement District No. 20
Exhibit A: City Engineer's Report
Exhibit B: District Map
Notice of Public Hearing with mailing list
Resolution No. 01-46, Neighborhood Sewer Reimbursement District Incentive Program

FISCAL NOTES

Total final cost of improvements including administrative fee: \$153,133.12. This is \$42,356.88 (22%) less than the estimated cost of \$195,490 reported in the preliminary City Engineer's Report. Each property owner's estimated fair share of the public sewer line is \$10,938.08. Each owner's fair share would be limited to \$6,000 for connections completed within three years of City Council approval of the final City Engineer's Report in accordance with Resolution 01- 46

600-11

CITY OF TIGARD, OREGON

RESOLUTION NO. ⁰¹⁻~~00-~~11

A RESOLUTION ESTABLISHING SANITARY SEWER REIMBURSEMENT
DISTRICT NO. 20 (ROSE VISTA DRIVE)

WHEREAS, the City has initiated the Neighborhood Sewer Extension Program to extend public sewers and recover costs through Reimbursement Districts in accordance with TMC Chapter 13.09; and

WHEREAS, these property owners have been notified of a public hearing in accordance with TMC 13.09.060 and a public hearing was conducted in accordance with TMC 13.09.050; and

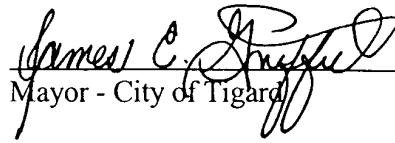
WHEREAS, the City Engineer has submitted a report describing the improvements, the area to be included in the Reimbursement District, the estimated costs, a method for spreading the cost among the parcels within the District, and a recommendation for an annual fee adjustment; and

WHEREAS, the City Council has determined that the formation of a Reimbursement District as recommended by the City Engineer is appropriate.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

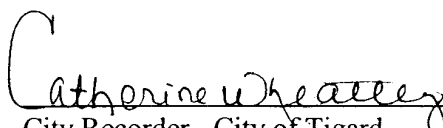
- SECTION 1: The City Engineer's report titled "Sanitary Sewer Reimbursement District No. 20", attached hereto as Exhibit A, is hereby approved.
- SECTION 2: A Reimbursement District is hereby established in accordance with TMC Chapter 13.09. The District shall be the area shown and described on Exhibit B. The District shall be known as "Sanitary Sewer Reimbursement District No. 20."
- SECTION 3: Payment of the reimbursement fee as shown in Exhibit A is a precondition of receiving City permits applicable to development of each parcel within the Reimbursement District as provided for in TMC 13.09.110.
- SECTION 4: An annual fee adjustment, at a rate recommended by the Finance Director, shall be applied to the Reimbursement Fee.
- SECTION 5: The City Recorder shall cause a copy of this resolution to be filed in the office of the County Recorder and shall mail a copy of this resolution to all affected property owners at their last known address, in accordance with TMC 13.09.090.

PASSED: This 27th day of February 2001.



Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard

Exhibit A
City Engineer's Report
Sanitary Sewer Reimbursement District No. 20

Background

This project was constructed and funded under the City of Tigard Neighborhood Sewer Extension Program (NSEP). Under the program the City of Tigard would install public sewers to each lot within a project area. At the time the property owner connects to the sewer, the owner would pay a connection fee of \$2,335.00 and reimburse the City for a fair share of the cost of the public sewer. There is no requirement to connect to the sewer or pay any fee until connection is made. In addition, property owners are responsible for disconnecting their existing septic system according to Washington County rules and for any other modifications necessary to connect to the public sewer.

Project Area - Zone of Benefit

An existing sanitary sewer line is located in SW 118th Avenue east of the district as shown on Exhibit Map B. The line was extended across SW 118th Avenue, then across a residential lot not in the district (13855 SW 118th Court) and finally across a residential lot within the district (12025 SW Rose Vista Drive) before reaching SW Rose Vista Drive. The line serves fourteen properties along SW Rose Vista Drive. The lot at 12035 SW Rose Vista Drive is not included in the district since this lot is currently served from a public line at the southeast corner of the lot. The lot at 12015 SW Gaarde Street was originally included in the District but is proposed to be removed from the district since it has been found to be currently served by a line in Gaarde Street. This will reduce the number of lots in the District from fifteen to fourteen.

Cost

The purchase price of the two easements is included in the project cost and will be recoverable through the collection of the reimbursement fees. The easement across 13855 SW 118th Court (not within the proposed district) has been purchased for \$2,410. The cost of purchasing the easement across the lot at 12025 SW Rose Vista Drive is described in the attached agreement between the owner and the City. The agreement provides for the payment of \$8,280 plus waiver of the connection fee of \$2,335 for a total purchase price of \$10,615. This results in a total cost for the two easements of \$13,025. Construction of the line through this easement required removal of the septic system, necessitating immediate connection to the sewer. The owner agreed to place a deposit with the City towards the fee required for service. The owner has connected to the sewer using the deposit as payment for the reimbursement fee. The City has

paid the connection fee as required by the owner's agreement and included the cost in the amount recoverable through the Reimbursement District.

The actual cost for the sanitary sewer construction is **\$121,894.05**. Engineering and inspection fees amount to **\$18,214.07** (13.5%) as defined in TMC 13.09.040(1). The total project cost including these fees and **\$13,025** for easements is **\$153,133.12**. This entire amount should be reimbursed to the sanitary sewer fund as properties connect to the sewer and pay their fair share of the total amount.

In addition to sharing the cost of the public sewer line, each property owner, except for the owner providing the easement, will be required to pay an additional \$2,335 connection and inspection fee when connection to the public line is made. All owners will be responsible for all plumbing costs required for work done on private property.

Reimbursement Rate

All properties in this area are zoned R-4.5 and have similar lot sizes as can be seen in Exhibit Map B. Therefore, it is recommended that the total cost of the project be divided equally among the fourteen properties included in the reimbursement district

Other reimbursement methods include basing the proportional share upon the square footage of each property or by the length of frontage of each property. These methods are not recommended because there is no correlation between these methods and the cost of providing service to each lot or the benefit to each lot.

The preliminary City Engineer's Report stated that owners would be offered the incentives of Resolution 98-51 that limited the fee to \$8,000 to the extent that it does not exceed \$15,000 per owner for connections completed within one year of final approval of the City Engineer's Report. Since then, this resolution has been replaced by Resolution 01-46. The fee is now limited to \$6,000 to the extent that it does not exceed \$15,000 per owner for connections completed within three years of final approval of the City Engineer's Report.

Each property owner's actual fair share of the public sewer line is \$10,938.08. Each owner's fair share would be limited to \$6,000 for connections completed within three years of City Council approval of the final City Engineer's Report following construction in accordance with Resolution 01- 46 (attached)

Annual Fee Adjustment

TMC 13.09.115 states that an annual percentage rate shall be applied to each property owner's fair share of the sewer line costs on the anniversary date of the reimbursement agreement. The Finance Director has set the annual interest rate at 6.05% as stated in City of Tigard Resolution No. 98-22.

Recommendation

It is recommended that a reimbursement district be formed with an annual fee increase as indicated above and that the reimbursement district continue for fifteen years as provided in the Tigard Municipal Code (TMC) 13.09.110(5). Fifteen years after the formation of the reimbursement district, properties connecting to the sewer would no longer be required to pay the reimbursement fee.

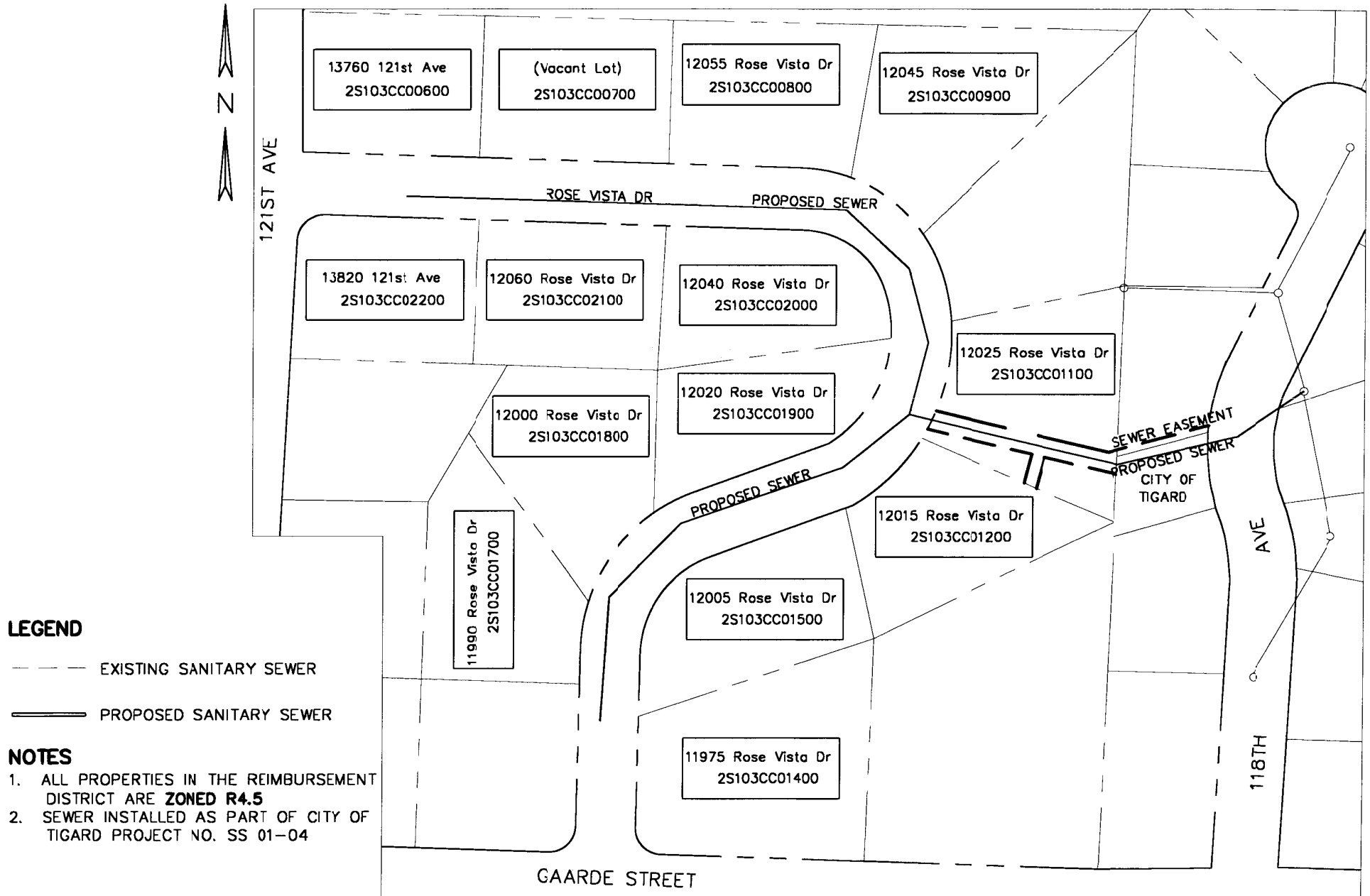
Submitted September 11, 2001.

Agustin P. Duenas, PE
City Engineer

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REIMBURSEMENT DISTRICT #20

A PORTION OF THE SW 1/4 SW 1/4 SECTION 3 T2S R1W W.M.
CITY OF TIGARD, OREGON



September 10, 2001

NOTICE

of

PUBLIC HEARING

**Tuesday, September 25, 2001
7:30 PM**

**Tigard Civic Center
Town Hall**

The following will be considered by the Tigard City Council on September 25, 2001 at 7:30 PM at the Tigard Civic Center - Town Hall, 13125 SW Hall Blvd., Tigard, Oregon. Both public oral and written testimony is invited. The public hearing on this matter will be conducted as required by Section 13.09.105 of the Tigard Municipal Code. Further information may be obtained from the Engineering Department at 13125 SW Hall Blvd., Tigard, Oregon 97223, or by calling 639-4171.

INFORMATIONAL PUBLIC HEARING:

FINALIZATION OF SANITARY SEWER REIMBURSEMENT DISTRICT NO. 20 (SW Rose Vista Drive). The Tigard City Council will conduct a public hearing to hear testimony on the finalization of Sanitary Sewer Reimbursement District No. 20 formed to install sewers in SW Rose Vista Drive.

Each property owner's recommended fair share of the public sewer line is \$10,938.08. Each owner's fair share would be limited to \$6,000 for connections completed within three years of City Council approval of the final City Engineer's Report following construction in accordance with Resolution 01- 46. Please call Greg Berry of the Engineering Department 639-4171 ext. 373 if you have questions.

TaxID	Name	Address	City	State	Zip
2S103CC00600& 00700	ERDT DONALD D DOROTHY P	13760 SW 121ST	PORTLAND	OR	97223
2S103CC00800	MCPHERSON LORIN F/LAURA N	12055 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC00900	BRUMLEY SCOTT B & JANINE K	12045 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC02200	ROLL WAYNE J DEMETRA T	13820 SW 121ST	TIGARD	OR	97223
2S103CC02100	BRIEN KENNETH G &	12060 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC02000	HAZARD JOHN GERALD &	12040 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC01100	HUFFMAN DAVID S &	12025 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC01900	WISER KENT C & BRENDA D	12020 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC01800	MORGAN MICHAEL JOHN &	12000 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC01700	ZIMMERMAN LIN A	11990 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC01200	SMITH GENE F MARY E	12015 SW ROSE VISTA DR	TIGARD	OR	97223
2S103CC01500	SMITH HOPE Y	12005 SW ROSE VISTA	TIGARD	OR	97223
2S103CC01400	PICKELL HELEN C	10475 SW KABLE ST	TIGARD	OR	97224

CITY OF TIGARD, OREGON

RESOLUTION NO. 01-46

A RESOLUTION REPEALING RESOLUTION NO. 98-51 AND ESTABLISHING A REVISED AND ENHANCED NEIGHBORHOOD SEWER REIMBURSEMENT DISTRICT INCENTIVE PROGRAM

WHEREAS, the City Council has initiated the Neighborhood Sewer Extension Program to extend public sewers through Reimbursement Districts in accordance with TMC Chapter 13.09; and

WHEREAS, on October 13, 1998, the City Council established The Neighborhood Sewer Reimbursement District Incentive Program through Resolution No. 98-51 to encourage owners to connect to public sewer. The program was offered for a two-year period after which the program would be evaluated for continuation; and

WHEREAS, on September 26, 2000, the City Council extended The Neighborhood Sewer Reimbursement District Incentive Program an additional two years through Resolution No. 00-60; and

WHEREAS, City Council finds that residential areas that remain without sewer service should be provided with service within five years; and

WHEREAS, Council has directed that additional incentives should be made available to encourage owners to promptly connect to sewers once service is available and that owners who have paid for service provided by previously established districts of the Neighborhood Sewer Extension Program should receive the benefits of the additional incentives.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Resolution No. 98-51 establishing the Neighborhood Sewer Reimbursement District Incentive Program is hereby repealed.

SECTION 2: A revised incentive program is hereby established for the Neighborhood Sewer Extension Program. This incentive program shall apply to sewer connections provided through the sewer reimbursement districts shown on the attached Table 1 or established thereafter. All connections qualifying under this program must be completed within **three years** after Council approval of the final City Engineer's Report following a public hearing conducted in accordance with TMC Section 13.09.105 or by **two years** from the date this resolution is passed, which ever is later, as shown on the attached Table 1.

SECTION 3: To the extent that the reimbursement fee determined in accordance with Section 13.09.040 does not exceed \$15,000, the amount to be reimbursed by an owner of a lot zoned single family residential shall not exceed \$6,000 per connection, provided that the lot owner complies with the provisions of Section 2. Any amount over \$15,000 shall be reimbursed by the owner. This applies only to the reimbursement fee for the sewer installation and not to the connection fee, which is still payable upon application for

sewer connection.

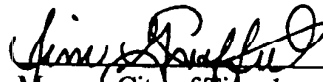
SECTION 4: The City Engineer's Report required by TMC Chapter 13.09 shall apply the provisions of this incentive program. Residential lot owners who do not connect to sewer in accordance with Section 2 shall pay the full reimbursement amount as determined by the final City Engineer's Report.

SECTION 5: Any person who has paid a reimbursement fee in excess of the fee required herein is entitled to reimbursement from the City. The amounts to be reimbursed and the persons to be paid shall be determined by the Finance Director and approved by the City Manager. There shall be a full explanation of any circumstances that require payment to any person who is not an original payer. The Finance Director shall make payment to all persons entitled to the refund no later than August 31, 2001.

SECTION 6: The Sanitary Sewer Fund, which is the funding source for the Neighborhood Sewer Reimbursement District Program, shall provide the funding for the installation costs over \$6,000 up to a maximum of \$15,000 per connection.

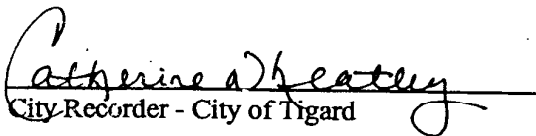
EFFECTIVE DATE: July 10, 2001

PASSED: This 10th day of July 2001.



Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard

I:\Citywide\Res\Resolution Revising the Neighborhood Sewer Incentive Program

AGENDA ITEM # _____
FOR AGENDA OF September 25, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Update from the New Tigard Library Construction Committee about the recommended site for the proposed new library.

PREPARED BY: Margaret Barnes DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Presentation by the New Tigard Library Construction Committee to update the City Council about the recommended site for the proposed new library.

STAFF RECOMMENDATION

The staff recommendation is for the City Council to direct the Construction Committee to continue its work.

INFORMATION SUMMARY

City Council gave their approval of the recommended site for the proposed new library for Tigard at the August 28, 2001 meeting. This site is a 14.7-acre property located along Hall Boulevard near O'Mara Street. As was mentioned at that meeting, this site has access to public transportation, is close to the City Hall complex and includes a high quality natural area. In addition, this property is located along the Fanno Creek Trail System and has the potential to enhance the existing network of trails available for public use.

Working with BML Architects and the City Engineer, the Committee has begun to analyze the recommended site for placement of the new library and the development of a new road. At this time, the Committee is prepared to update the Council on the placement of the proposed new library and the placement of a proposed road on the property.

OTHER ALTERNATIVES CONSIDERED

None.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Goal #3: Adequate facilities are available for efficient delivery of life-long learning programs and services for all ages.

ATTACHMENT LIST

None.

FISCAL NOTES

The preliminary estimated cost for the proposed new library project is between \$14,000,000 and \$17,000,000.

AGENDA ITEM # _____
FOR AGENDA OF September 25, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Revisions to Tigard Municipal Code Chapter 13.09, Reimbursement Districts

PREPARED BY: G N Berry DEPT HEAD OK A. P. Duenas CITY MGR OK WAM

ISSUE BEFORE THE COUNCIL

Shall the City Council approve proposed revisions to Tigard Municipal Code Chapter 13.09?

STAFF RECOMMENDATION

That City Council approve the attached Ordinance adopting the proposed revisions to Tigard Municipal Code Chapter 13.09.

INFORMATION SUMMARY

Chapter 13.09 Reimbursement Districts, (attached) enables the City to recover the cost of constructing public sewers by charging each owner within the district a reimbursement fee when the owner connects to the sewer. On May 15, 2001, City Council directed staff to prepare two revisions. The proposed revisions authorize purchasing an easement from an owner within the proposed district and allows the City to recover its cost of administering reimbursement districts as described in the attached memorandum to City Council.

These revisions are included in the attached proposed Ordinance amending Chapter 13.09.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

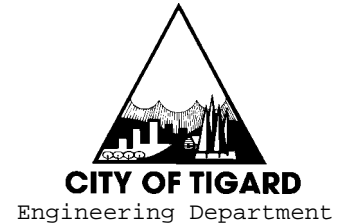
N/A

ATTACHMENT LIST

Tigard Municipal Code Chapter 13.09, Reimbursement Districts
Proposed Ordinance
Memorandum to City Council dated September 5, 2001

FISCAL NOTES

Reimbursement districts are funded through the Neighborhood Sewer Extension Program in the annual Capital Improvement Program. For FY 2001-02, the amount allocated for the formation of districts is \$2,000,000.



MEMORANDUM

**13125 SW Hall Blvd.
Tigard, OR 97223
Phone 503-639-4171
Fax: 503-624-0752**

TO: Mayor and City Councilors
William Monahan, City Manager

FROM: Gus Duenas,
City Engineer

DATE: September 5, 2001

SUBJECT: Revisions to Tigard Municipal Code Chapter 13.09, Reimbursement Districts

The City is using Chapter 13.09 (attached) primarily to form Reimbursement Districts for sewer extensions. This enables the City to recover the cost of constructing public sewers by charging each owner within the district a reimbursement fee when the owner connects to the sewer. On May 15, 2001, City Council discussed the objectives that Tigard Municipal Code Chapter 13.09 is expected to achieve and directed staff to prepare two revisions.

First, Section 13.09.040 currently states that for the cost of the purchase of an interest in land (such as an easement) to be included the reimbursement fee, it must be "purchased from a third party to complete off-site improvements". However, providing service to an existing subdivision may require purchasing an easement from an owner within the proposed district. This results in the purchase not being from a third party and not for an off-site improvement. Consequently, staff was directed to prepare revisions that would authorize such purchases.

Second, Chapter 13.09 does not provide a way for the City to recover its cost of administering reimbursement districts. Revisions to the Chapter have been prepared to provide recovery of this cost as directed by City Council.

In addition, references to "City Administrator" have been updated to "City Manager".

These revisions have been reviewed by the City Attorney's office and are included in the attached proposed Ordinance amending Chapter 13.09.

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-

AN ORDINANCE AMENDING CHAPTER 13.09, REIMBURSEMENT DISTRICTS, OF THE TIGARD MUNICIPAL CODE.

WHEREAS, the City Council finds that Chapter 13.09 of the Tigard Municipal Code should be updated;

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Paragraph 13.09.030 (e) is amended to read as follows:

(e) The amount to be charged by the City for administration of the ~~agreement~~ district by the City. The administration fee shall be fixed by the City Council and will be included in the resolution approving and forming the reimbursement district. If the applicant is other than the City, the administration fee is due and payable to the City at the time the agreement in Section 13.09.070(2) is signed. If the City is the applicant, the administration fee shall be included in the reimbursement fee and is due and payable at the time there is an obligation to pay the reimbursement fee as required by Section 13.09.110.

Subsection 13.09.040 (1) is amended to read as follows:

(1) The cost to be reimbursed to the applicant, if other than the City, shall be limited to the cost of construction, engineering, and off-site right of way. If the applicant is the City, the costs to be reimbursed shall also include an administration cost and all costs associated with the acquisition of easements and rights of way. Engineering shall include surveying and inspection and shall not exceed 13.5% of eligible construction cost. If the applicant is other than the City, the ~~Costs~~ to be reimbursed for right of way shall be limited to the reasonable market value of land or easements purchased by applicant from a third party to complete off-site improvements.

Subsection 13.09.070 (2) first sentence, is amended to read as follows:

(2) When the applicant is other than the City, the resolution shall instruct the City ~~Administrator~~ Manager to enter into an agreement with the applicant pertaining to the reimbursement district improvements.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

i:\citywide\ord\revisions to tmc 13.09 o.doc

AGENDA ITEM # _____
FOR AGENDA OF 9.25.01

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Amendments to Noise Ordinance – TMC Chapter 7.40 Article IV.

PREPARED BY: Dick Bewersdorff DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the City amend its noise ordinance?

STAFF RECOMMENDATION

Review the proposed ordinance, especially the proposed exceptions; make changes as desired and approve.

INFORMATION SUMMARY

The City's noise ordinance is cumbersome and difficult to administer because it requires measuring sound levels by certified technicians using specified equipment. Also, the City is unable to enforce against short term unnecessarily loud noises. The table setting the maximum sound levels is confusing, and the code provisions create uncertainty about the length of time the noise must exist. As a result of discussions, the City Council directed staff to pursue potential ordinance changes. Based on comments and material discussed by the City Council, the City Attorney's office prepared amendments to the noise ordinance.

On July 17, 2001, the City Council held a work session of which the noise ordinance proposals were discussed in general. The amendments allow a subjective, as well as objective, standard; simplify the technical standards; and provide for exceptions rather than a permit system. This would create a code that will be easier to administer and provide greater clarity for citizens.

Two memos from the City Attorney's office are included, as well as the draft ordinance. The City Attorney's memos calls for careful consideration of the exemption list by the City Council. On 8-30-01, Administrative staff recognized a potential issue for late night construction of streets such as the recent overlay of Highway 99W by ODOT. The City Attorney drafted additional language that is covered under 7.40.180.M. While the intent of the ordinance was to eliminate and simplify processes as much as possible, Section M will add a permit process. An alternative is to have ODOT directly petition the City Council for permission to work in these instances. This alternative is used by other cities. The City Attorney's office has recommended additional language under 7.40.150.D that defines the City Manager as the City Manager or his designee so that other departments can administer the noise section. Community Development will be administering the noise ordinance at this time.

An additional issue was suggested by Administrative staff. The National Guard Armory was formally granted permits to exceed noise standards by up to 10 decibels by 7.40.200 of the present ordinance. The City Attorney's office has suggested the standards should apply equally to all users such as the grange, high school and meeting auditoriums. As a result, an additional permit process to exceed noise levels by 10 decibels has not been added to this draft ordinance. Council should review the ordinance and direct changes as appropriate.

OTHER ALTERNATIVES CONSIDERED

1. Do not change the code. This would leave the present system, with identified problems, in place.
2. Amend the noise ordinance in a more piecemeal fashion rather than overhauling it totally.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

1. City Attorney memo dated 6/12/01 – Issues & Options
2. City Attorney memo dated 6/12//01 – Issues & Comments
3. Existing Noise Code Section (Article IV) for comparative purposes
4. Draft Ordinance
5. Letter from Michael Trigoboff

FISCAL NOTES

N/A

AGENDA ITEM # _____
FOR AGENDA OF 9.25.01

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

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FISCAL NOTES

N/A

Attachment 1

**RAMIS
CREW
CORRIGAN &
BACHIRACH, LLP**

ATTORNEYS AT LAW

1727 N.W. Hoyt Street
Portland, Oregon 97209

(503) 222-4402
Fax: (503) 243-2944

MEMORANDUM

TO: Tigard City Council

FROM: Timothy V. Ramis, Gary Firestone, City Attorney's Office

DATE: June 12, 2001

RE: Noise Ordinance

The City is considering revising its noise ordinance (TMC 7.40.130 to 7.40.200). You asked us to examine the ordinance and suggest ways of amending it consistent with the issues identified in its earlier review. The following sets out issues and options for the City. The attached chart provides much of the same information in chart form. We have also, as we discussed, drafted an ordinance that is intended to incorporate the changes we have discussed. A copy of the draft ordinance is also attached.

Issues and Options

- ◆ The City needs to decide whether to modify the existing code keeping same basic format or to totally overhaul it using a different format.
- ◆ The current Table 1 allows greater impacts from some uses than from others. A standard that considers only the nature of the property where the noise is heard appears to be more consistent with the City's goals.
- ◆ The existing system provides only for a measurable objective standard (dB). While measurable objective standards are clearer, it is often difficult to have a trained person available with a certified sound-measuring device in the right place at the right time. The City could adopt alternative standards to determine when a violation occurs: one measurable objective standard and one more subjective standard.
- ◆ If the City adopts a non-measurable standard, the City may require more than one witness to establish the violation. One option the City can consider is to require two witnesses (one of whom may be a police or code enforcement officer) to establish its case in

Memorandum re: Noise Ordinance

June 12, 2001

Page 2

municipal court.

- ◆ The City can use a simpler description of sound measuring devices and the necessary training for equipment operators.
- ◆ Permits. There is no need for permits unless the permits will allow the code standards to be exceeded. If the City wishes to limit permits to certain types of situations, it may do so. One possibility is to expand the exceptions so that permits will not be needed.
- ◆ The City of Hillsboro's code has many of the features the City is considering. The draft ordinance is based on the Hillsboro structure.
- ◆ One issue not identified in our discussions but which arose when drafting the ordinance is the hours that certain operations (construction, etc.) may occur. As written, construction, home operation of tools, and other uses are exempt, even if they violate the noise standards. The City will need to decide whether to keep these exemptions. If the exemptions are not kept, the City should consider raising the permissible dB levels. The current draft uses several different time periods for the various exemptions. It may be advisable to have a single time period applicable to all exemptions; it certainly would be easier for the code enforcement officer.
- ◆ As to the issue of who should enforce (code enforcement officer or police), if the City wants to transfer authority (at least joint authority) to police officers, the Community Development Director could simply appoint all serving City police officers as code enforcement officers (see TMC 1.16.030 (b)), to enforce violations of the noise ordinance, if this is agreeable to all concerned.

Attachment 2

RAMIS
CREW
CORRIGAN &
BACHIRACH, LLP

ATTORNEYS AT LAW

1727 N.W. Hoyt Street
Portland, Oregon 97209

(503) 222-4402
Fax: (503) 243-2944

MEMORANDUM

TO: Tigard City Council

FROM: City Attorney's Office

DATE: June 12, 2001

RE: Noise Ordinance

BACKGROUND

The City has found that its noise ordinance is increasingly difficult to administer. Staff has previously received direction from the City Council to pursue changes to the ordinance to make its administration easier. We have prepared a draft ordinance to totally restructure the noise ordinance to accomplish this, and to protect citizens from unnecessarily loud noises, while allowing reasonable opportunities for industrial, construction, and home maintenance and improvement activities. This memorandum discusses the main features of the draft ordinance and discusses the issues that Council will consider in deciding whether to adopt the ordinance, with or without amendments.

ISSUES AND COMMENTS

Who Is Responsible for Violations

Under the proposed ordinance, those who make the noise, cause the noise to be made, or permit it to be made on their property are responsible for the noise. The current ordinance applies only against those who cause or allow the noise to be made from their property. Often, a property owner will not be primarily responsible for excessive noise (it may be a person operating a vehicle or construction equipment or a person playing amplified music too loud in a park). Making both those directly responsible for the noise and property owners responsible will give the City the flexibility to deal with those who are truly responsible for violations.

Memorandum re: Noise Ordinance
June 12, 2001
Page 2

Technical Standards

The description of the type of sound-measuring equipment that can be used has been simplified and the qualifications of the equipment operator has is simplified in the proposed ordinance. The existing definition is very difficult, if not impossible to comply with, given changes in state regulations. The simpler description avoids the need to continually monitor state regulations.

Noise Limits

The proposed ordinance creates both a measurable objective standard that requires the use of sound measuring equipment and a more subjective standard that does not require machinery. Violating either standard will be a violation. Using only an objective measurable standard makes enforcement difficult. The person creating the noise can simply stop the activity when someone approaches with a sound-measuring device and start again when the sound-measuring equipment leaves. Using two alternative standards allows the City to enforce without sound-measuring equipment.

The objective standard proposed in the new ordinance does away with the need to measure for a period of time. The current ordinance allows extremely loud noises to occur intermittently, which does not seem consistent with the City Council's actual intent. The objective standard that is proposed is only concerned with the location where the sound is heard. The current ordinance considers both the location where the sound is heard and the location where the sound is produced.

The subjective standards prohibit noises in noise sensitive units (residences, hotels, schools, day-cares, churches, hospitals, nursing care centers) that are "plainly audible" at night (loud enough that content is communicated) or that are "unnecessarily loud" (interferes with normal spoken communication or disturbs sleep) at any time.

Prohibited Noises

The proposed ordinance continues the existing outright ban on the use of "jake brakes" (exhaust brakes), but allows an exception for emergencies. The ordinance lists types of sounds that can violate the noise ordinance, but prohibits them only if they exceed the objective or subjective noise limits. The list is not exclusive – any action that creates a sound in excess of the limit is a violation, unless it qualifies for an exception.

Memorandum re: Noise Ordinance
June 12, 2001
Page 3

Exceptions

The proposed ordinance contains a list of exceptions. Unlike the present ordinance, it does not provide for noise permits. If an activity qualifies for an exception, no permit is needed. If not, the noise levels must be complied with. Exceptions include non-amplified sounds at sporting events, sounds created by emergency work or emergency warning devices, certain activities during daytime (licensed demolition and construction, industrial activities, domestic tools, chainsaws), regular traffic, and community events.

The list of exceptions is one of the most important parts of the ordinance. By having a fairly lengthy list of exceptions, the City can avoid the need for a permit process and can set fairly stringent noise standards. However, by allowing the exceptions, the City accepts that the activities listed on the exception list may be carried on even if they violate the noise standards in the ordinance. For that reason, the draft ordinance contains a provision establishing a maximum noise level for some of the excepted activities.

Because of the importance of the exceptions, we recommend that the City Council consider each proposed exception carefully and also consider the appropriate hours of operation for those activities that are permitted during daylight hours.

Evidence

One of the reasons the City originally adopted a measurable objective standard was a concern that the City would be flooded with unreasonable complaints from people who seek to interfere with industrial and construction activities that are needed for the economic well-being of the City. The proposed ordinance recognizes that valid concern and requires evidence from at least two persons from different households to establish a violation of the subjective standards.

DRAFT NOISE ORDINANCE AMENDMENT ISSUES AND OPTIONS

ISSUE	OPTIONS	RECOMMENDATION
To what extent should noise ordinance be amended?	<ol style="list-style-type: none"> 1. Keep as is. 2. Modify individual provisions, keep existing structure. 3. Total revision, including new structure. 	Totally revise the noise ordinance, following the format of the Hillsboro Code. It is simpler and easier to reformat the code, given the changes that are needed.
Objective or subjective standard to determine violation?	<ol style="list-style-type: none"> 1. Keep existing objective standard. 2. Use subjective standard. 3. Use both. 	Use both an objective and subjective standard as alternate ways of establishing a violation.
Amount of proof for a violation based on the subjective standard.	<ol style="list-style-type: none"> 1. One witness. 2. Two witnesses. 3. Three or more witnesses. 	Requiring more than one witness is advisable, given the subjective nature of the standard and the potential for abuse. Two witnesses (from different households), one of whom may be a city employee (police or code enforcement officer) seems a reasonable number. Some cities have required three witnesses.
Table for objective standards	<ol style="list-style-type: none"> 1. Keep or modify Table 1 of TMC 7.40.170. 2. Use simpler standard. 	The current table considers both the use of the property where the sound is heard and the use of the property where the sound is generated. A simpler standard that considers only the use of the property where the sound is heard is simpler to administer and provides the protection that was intended by the noise ordinance.
Standards for equipment and training of person providing evidence of objective standard.	<ol style="list-style-type: none"> 1. Current detailed standard. 2. Simpler standard. 	The current code provides substantial detail about the nature of equipment and certification of the equipment operator. This type of detail is not required for a civil infraction process. A simpler standard for the equipment is advisable. No standard for the operator is needed.
Permits	<ol style="list-style-type: none"> 1. Keep existing permit system. 2. Modify permits to allow the dB level to be exceeded. 3. Replace permit system with exception system. 	A change is needed – the permit system as currently used has no real effect because it does not allow maximum sound levels to be exceeded. An exception system would simplify things for both the City and its citizens.
Exceptions/exemptions	<ol style="list-style-type: none"> 1. Allow multiple exceptions/exemptions. 2. Limit exceptions/exemptions. 	With an expanded exception/exemption list, the City deprives itself of authority to regulate the noise emanating from certain types of activity.

TIGARD MUNICIPAL CODE

private property any kind of rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal, or vehicle traveling upon a public way. (Ord. 86-20 §4(Exhibit C(5)(6)), 1986).

ARTICLE IV. NUISANCES AFFECTING THE PUBLIC PEACE

7.40.130 Noise—Definitions.

For purposes of this section and Sections 7.40.130 through 7.40.210, the following mean:

(a) "Ambient noise" means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far. For the purpose of this article, ambient noise level is the level obtained when the noise level is averaged over a minimum period of fifteen minutes at a specific location without inclusion of noise from isolated identifiable sources.

(b) "Commercial land use" means any use which is a permitted or conditional use in the C-P, C-G, CBD, and C-N zoning districts, as identified in Title 18.

(c) "Industrial land use" means any use which is a permitted or conditional use in the I-P, I-L, and I-H zoning districts as identified in Title 18.

(d) "Noise-sensitive land use" means any portion of a church, children's day care, hospital, residential group care, school, single or multifamily dwelling unit, and mobile home that is intended for living, sleeping or eating. This definition includes areas or structures such as yard areas, patios, and garages. (Ord. 96-06; Ord. 90-03 §1(part), 1990).

7.40.140 Motor vehicle noises.

(a) Motor vehicles shall operate in a manner which complies with applicable state motor vehicle noise regulations.

(b) The idling of engines and auxiliary equipment on motor vehicles on private property, which exceed the noise standards specified in Sections 7.40.170 and 7.40.180, shall not be permitted for a period greater than five minutes. (Ord 90-03 §1(part), 1990).

7.40.150 Jake brakes prohibited.

No person shall operate within the city limits of the city a motor vehicle exhaust-braking system commonly known as a "jake brake." For the purposes of this section, the exceptions set forth in Section 7.40.190 shall not apply and this section shall be read as an absolute prohibition of the operation of such motor vehicle braking systems within the city. (Ord. 90-03 §51(part), 1990).

7.40.160 Noise emanating from certain property.

Except as may be expressly allowed pursuant to the provisions of Sections 7.40.140, 7.40.190 and 7.40.200, no person shall cause or permit noise to emanate from the property under his or her control so as to cause the ambient noise level at the nearest noise sensitive land use to exceed the levels specified in Sections 7.40.170 and 7.40.180. (Ord. 90-03 §1(part), 1990).

7.40.170 Maximum noise levels.

For the purposes of Sections 7.40.130 through 7.40.200, the maximum noise levels, as measured pursuant to Section 7.40.180, are set forth in Table I below.

TIGARD MUNICIPAL CODE

TABLE I
Maximum Noise Levels

<u>Land Use</u> <u>of Source</u>	<u>dB Noise Level</u> <u>Day (7am-10pm)</u>	<u>dB Noise Level</u> <u>Night (10pm-7am)</u>
Noise Sensitive	50	40
Commercial	75	60
Industrial	75	60

"Noise Level" refers to the ambient noise level at the nearest noise sensitive land use. (Ord. 96-06; Ord. 90-03 §1(part), 1990).

7.40.180 Standard for measurement.

(a) Measurements shall be made with a calibrated sound level meter meeting the requirements of a Type I or Type II meter, as specified by the American National Standard Specification for Sound Level Meters (ANSI Standards 1.4-1971). For purposes of this article, a sound level meter shall contain at least a recording calibration curve for an "A" weighing network, and both fast and slow meter response capability.

(b) Persons conducting sound level measurements shall have received training in the techniques of sound measurement and the operation of sound measuring instruments from the Department of Environmental Quality, a registered acoustical engineer or other competent body prior to engaging in any enforcement activity.

(c) Noise measurements shall be taken in accordance with Chapter 340, Oregon Administrative Rules, Division 35, Noise Control Regulations for Industry and Commerce. (Ord 90-03 §1(part), 1990).

7.40.190 Noise--Exemptions to restrictions.

The restrictions imposed by Sections 7.40.130 through 7.40.180 shall not apply to the following:

(a) Emergency equipment not operating on a regular or scheduled basis;

(b) Noise emanating from all public streets due to sounds created by the tires or motor of motor vehicles operating in a manner complying with applicable state motor vehicle noise regulations;

(c) Sounds originating on construction sites and reasonably necessary to the accomplishment of work in progress; provided, however, that no construction work may be carried out between the hours of nine p.m. and seven a.m. Monday through Friday, nine p.m. and eight a.m. on Saturday, and nine p.m. and nine a.m. on Sunday except for bona fide emergencies where the public health or safety is threatened or for which a special permit, granted by the City Manager or designee, has first obtained in accordance with the procedures contained in Section 7.40.200; and

(d) Sounds originating from construction projects for the purpose of building new or improving existing public facilities in public right of way including, but not limited to roads, bridges, waterlines, and sewers, may be permitted at any time if an exemption is granted by the City Manager or designee. An exemption may be granted only after a noise mitigation plan is submitted to and approved by the City Manager or designee which:

1. Maps the project noise impacts, and explains how the impacts will be mitigated.

2. Provides special consideration and mitigation efforts for noise sensitive land uses.

3. Outlines public notification plans.

4. Provides the City and the public

TIGARD MUNICIPAL CODE

access to 24-hour telephone contact numbers for information and complaints related to the project.

(e) Lawn, garden or household equipment associated with the normal repair, upkeep or maintenance of property. (Ord. 99-29; Ord. 96-06; Ord. 90-03 §1(part), 1990).

7.40.200 Permits required for exceeding allowable noise levels.

(a) The use of amplified voice and music or creation of noise at levels which would otherwise exceed those permissible under Section 7.40.130 through 7.40.190 may be allowed upon application to the City Manager or designee. Application for an amplified sound permit shall be made to the City Manager or designee on forms prepared by the city. The applicant shall identify the date, location and time of the event for which the permit is sought, and shall provide an estimate of the duration of the event.

(b) In the case of a series of similar events to be conducted at the same location, the City Manager or designee may, at his or her discretion, issue the permit in a form extending to cover the entire series.

(c) The City Manager or designee shall grant a permit in any instance in which the event and its accompanying noise will not, in his judgment, interfere unreasonably with the peace of those likely to be affected by the noise. In making this judgment, the City Manager or designee shall take into account the nature of the surrounding properties and the benefit to the community of the event for which the application is made. The permit shall contain a condition stating that the maximum noise levels permissible in Table I, shall not be exceeded by more than ten decibels. The permit may also contain additional conditions deemed necessary by the City Manager or designee to protect the peace of those likely to be affected by the noise. The permit shall be subject to immediate revocation by the City

Manager or designee if any conditions of the permit are violated.

(d) The City Manager or designee may submit any question arising with respect to this section to the city council, and if any member of the city council requests its submission to the council, any such question shall be heard by the council. In either event, the decision of the city council shall be final. (Ord. 99-29; Ord. 96-06; Ord. 90-03 §1(part), 1990).

ARTICLE VI. VIOLATION—PENALTY

7.40.210 Penalty for chapter violations.

(a) A violation of this chapter shall constitute a Class 1 civil infraction, which shall be processed according to the procedures established in the civil infractions ordinance, set out at Chapter 1.16 of this code.

(b) Each violation of a separate provision of this chapter shall constitute a separate infraction, and each day that a violation of this chapter is committed or permitted to continue shall constitute a separate infraction.

(c) A finding of a violation of this chapter shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the city.

(d) If a provision of this chapter is violated by a firm or corporation, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this chapter. (Ord. 99-01; Ord. 90-03 §1(part), 1990).■

CITY OF TIGARD, OREGON

ORDINANCE NO. 01- ____

AN ORDINANCE REPEALING SECTIONS 7.40.130 THROUGH 7.40.200 OF THE TIGARD MUNICIPAL CODE AND ADDING NEW SECTIONS 7.40.130, 7.40.140, 7.40.150, 7.40.160, 7.40.170, 7.40.180, 7.40.190 AND 7.40.200 TO THE TIGARD MUNICIPAL CODE.

WHEREAS, the Tigard Noise Ordinance, TMC Chapter 7.40, Article IV, has become difficult to administer for various reasons including changes in state regulation;

WHEREAS, the City's experience in attempting to enforce the Noise Ordinance has demonstrated that a more flexible system of ensuring that the citizens of the City of Tigard are not subjected to unnecessarily loud noise is needed;

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1. The Tigard Municipal Code Sections 7.40.130, through 7.40.200 are repealed.

SECTION 2. The Tigard Municipal Code Chapter 7.40, Article IV, is amended by adding the following sections:

SECTION 3. This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

7.40.130 Prohibition on Excessive Noises.

No person shall make, assist in making, permit, continue, or permit the continuance of, any noise within the City of Tigard in violation of this article. No person shall cause or permit any noise to emanate from property under that person's control in violation of this article.

7.40.140 Sound Measurement.

- A. While sound measurements are not required for the enforcement of this article, should measurements be made, they shall be made with a sound level meter. The sound level meter:
1. Shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter;
 2. Shall contain at least an A-weighted scale, and both fast and slow meter response capability.

- B. If measurements are made, the person making those measurements shall have completed training in the use of the sound level meter, and shall use measurement procedures consistent with that training.

7.40.150 Definitions.

As used in this Article:

- A. "Noise-sensitive unit" shall include any building or portion of a building containing a residence, place of overnight accommodation, church, day care center, hospital, school, or nursing care center. For the purpose of this definition, "residence" and "overnight accommodation" does not include living/sleeping quarters of a caretaker or watchperson on industrial or commercial property provided by the owner or operator of the industrial or commercial facility.
- B. "Plainly audible" means any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehensible musical rhythms or vocal sounds.
- C. "Unnecessarily loud" means any sound that interferes with normal spoken communication or that disturbs sleep.
- D. "City Manager" means the City Manager or designee.

7.40.160 Noise Limits

It is unlawful for any person to produce, or permit to be produced, sound which:

- A. When measured at the boundary of or within a property on which a noise sensitive unit, not the source of the sound, is located, exceeds:
 - 1. Forty dB at any time between nine p.m. and seven a.m. the following day; or
 - 2. Fifty dB at any time between seven a.m. and nine p.m. the same day; or
 - 3. Is plainly audible at any time between nine p.m. and seven a.m. the following day within a noise-sensitive unit which is not the source of sound; or
 - 4. Is unnecessarily loud within a noise-sensitive unit which is not the source of the sound.
- B. When measured at or within the boundary of or within a property on which no noise sensitive unit is located, and the noise originates from outside the property, if the noise level exceeds:

1. Sixty dB at any time between nine p.m. and seven a.m. of the following day, or
 2. Seventy-five dB at any other time.
- C. If within a park, street or other public place, is unnecessarily loud at a distance of 100 feet.

7.40.170 Prohibited Noises

- A. The use of exhaust brakes (jake brakes), except in an emergency, is prohibited at all times within the City, regardless of noise level.
- B. Except as provided in Section 7.40.180, the following acts are violations of this chapter if they exceed the noise limits specified in Section 7.40.160:
1. The sounding of any horn or signal device or any other device on any automobile, motorcycle, truck, bus or other vehicle while in motion, except as a danger signal.
 2. The operation of sound-producing devices such as, but not limited to, musical instruments, loudspeakers, amplifying devices, public address systems, radios, tape recorders and/or tape players, compact disc players, phonographs, television sets and stereo systems, including those installed in or on vehicles.
 3. The operation of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, except during sanctioned parades.
 4. The use of any automobile, motorcycle or other vehicle so out of repair or in such a manner as to create loud or unnecessary sounds, grating, grinding, rattling or other noise.
 5. The keeping of any animal or bird that creates noise in excess of the levels specified in Section 7.40.160.
 6. The operation of air conditioning or heating units, heat pumps, refrigeration units, (including those mounted on vehicles) and swimming pool or hot tub pumps.
 7. The erection (including excavation), demolition, alteration or repair of any building, except as allowed under Sections 7.40.180E and F.
 8. The use or creation of amplified sound in any outdoor facility.

9. Any other action that creates or allows sound in excess of the level allowed by Section 7.40.160.

7.40.180 Exceptions

The following shall not be considered violations of this article, even if the sound limit specified in Section 7.40.160 is exceeded:

- A. Non-amplified sounds created by organized athletic or other group activities, when such activities are conducted on property generally used for such purposes, such as stadiums, parks, schools, and athletic fields, during normal hours for such events.
- B. Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, regardless of whether such work is performed by a public or private agency, or upon public or private property.
- C. Sounds caused by bona fide use of emergency warning devices and alarm systems.
- D. Sounds regulated by federal law, including, but not limited to, sounds caused by railroads or aircraft.
- E. Sounds caused by demolition activities when performed under a permit issued by appropriate governmental authorities and only between the hours of seven a.m. and nine p.m. Monday through Friday and eight a.m. and nine p.m. on Saturday and Sunday.
- F. Sounds caused by industrial, agricultural or construction activities during the hours of seven a.m. to nine p.m. Monday through Friday, and eight a.m. to nine p.m. on Saturday and Sunday.
- G. Sounds caused by regular vehicular traffic upon premises open to the public in compliance with state law. Regular vehicle traffic does not include a single vehicle that creates noise in excess of the standard set forth in Section 7.40.160.
- H. Sounds caused by air-, electrical- or gas- driven domestic tools, including, but not limited to, lawn mowers, lawn edgers, radial arm, circular and table saws, drills, and or other similar lawn or construction tools, but not including tools used for vehicle repair, during the hours of seven a.m. to nine p.m., Monday through Friday and eight a.m. to nine p.m. on Saturday and Sunday.
- I. Sounds caused by chainsaws, when used for pruning, trimming or cutting of live trees between the hours of seven a.m. and nine p.m. Monday through Friday and eight a.m.

and nine p.m. on Saturday and Sunday, and not exceeding two hours in any twenty-four-hour period.

- J. Sounds created by community events, such as parades, public fireworks displays, street fairs, and festivals that the City Manager or designee has determined in writing to be community events for purposes of this section. The City Manager's decision shall be based on the anticipated number of participants or spectators, the location of the event and other factors the City Manager determines to be appropriate under the circumstances.
- K. Sounds made by legal fireworks on the third of July, Fourth of July, and the Friday and Saturday during the weekend closest to the Fourth of July of each year, between the hours of seven a.m. and eleven p.m.
- L. Sounds made between midnight and 12:30 a.m. on January 1 of each year.
- M. Sound originating from construction projects for public facilities within rights of way pursuant to a noise mitigation plan approved by the City Manager. The noise mitigation plan must:
 - 1. Map the project noise impacts and explain how the impacts will be mitigated;
 - 2. Provide special consideration and mitigation efforts for noise sensitive units;
 - 3. Outline public notification plans;
 - 4. Provide a 24-hour telephone contact number for information and complaints about the project.

The City Manager may approve a noise mitigation plan only if the City Manager determines that the noise mitigation plan will prevent unreasonable noise impacts.

7.40.190 Maximum Limit for Certain Activities

Notwithstanding Section 7.40.180, the creation of noise by any activity subject to the exceptions listed in Sections 7.40.180E, F, H, or I, in excess of 85 dB measured on property on which a noise sensitive use is located, for more than 5 minutes in any calendar day shall be a violation.

7.40.200 Evidence

In any civil infraction action based on a violation of the limits set forth in Sections 7.40.160 A.3; 7.40.160. A.4 or 7.40.160 C, the evidence of at least three persons from different households, shall be required to establish a violation. Any police or code

enforcement officer or other City employee who witnessed the violation shall be counted as a witness for purposes of the three witness requirement. The City may ask an alleged violator to enter in to a voluntary compliance agreement based on a single complaint or single witness.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

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6-Sep-01

RECEIVED C.O.T.

AUG 01 2001

Administration

[REDACTED]
Tigard, OR 97223

[REDACTED]
July 30, 2001

Mayor & City Council
13125 SW Hall Blvd.
Tigard, OR 97223

I'm writing to you about the new noise ordinance that the city is currently creating. I was at the recent city council meeting regarding the new ordinance, and I'm concerned about a particular issue that came up.

The issue I'm concerned about is the number of witnesses (or complainants) required to trigger the ordinance. There was a discussion about requiring more than one witness, so that the city would not be dragged into irrational disputes between neighbors. I understand this and agree that it's a valid concern. There was talk about requiring that the two witnesses be from different families, something else that I think would be a good idea.

But then the discussion moved on to requiring *three* witnesses, each from a different family. I believe that this requirement would set the bar too high. I can readily envision situations where a bad noise violation is going on and three witnesses from separate families are not available.

So I propose requiring either of the following:

- two witnesses, at least one of whom is a police officer, or
- three witnesses if none of them are police officers

I think that this would address the council's concern about not empowering false accusations while still enabling valid complaints. Tigard police officers are trusted professionals, and testimony by them can be relied upon to be true and accurate.

Yours truly,


Michael Trigoboff



August 1, 2001

Mr. Michael Trigoboff
7072 SW Barbara Lane
Tigard, OR 97223

Dear Mr. Trigoboff:

I received your July 30, 2001, letter to the Mayor and City Council detailing your concerns about the proposed changes to the noise ordinance. The Council is tentatively scheduled to conduct a public hearing regarding the noise ordinance on August 28, 2001. Your letter will be forwarded to the City Councilors for consideration prior to this meeting.

Should you have any questions, you may contact me at 503-639-4171, x382.

Sincerely,


Greer A. Gaston
Deputy City Recorder

c: Community Development

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AGENDA ITEM # _____
FOR AGENDA OF September 25, 2001

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Ordinance Amending Chapter 2.09 of the Tigard Municipal Code - Building Appeals Board

PREPARED BY: Gary Lampella DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

An Ordinance amending Chapter 2.09 of the Tigard Municipal Code, reducing the number of Building Appeals Board members from fourteen to seven, making the Board more functional and easier to convene.

STAFF RECOMMENDATION

Approve the Ordinance to reduce the number of members in Section 2.09.020 of the TMC, delete Sections E and I in Section 2.09.030, and re-lettering the remaining sections as shown on "Exhibit A".

INFORMATION SUMMARY

On October 10, 1995, Ordinance No. 95-21 was enacted by Council adding Chapter 2.09 to the TMC, which established a fourteen-member Building Appeals Board. The Council appointed thirteen members by Resolution No. 95-65 on December 19, 1995 with a term limit of four (4) years. There has been one appeal since the formation of the Building Appeals Board and the members' terms have since expired. Oregon Administrative Rules have been changed as a result of the passage of Senate Bill 587 during the 1999 Legislative Session. OAR 918-001-0130 allows an alternate appeal procedure. Persons aggrieved by a decision of a local building official are now allowed to choose whether to appeal through the local appeals process or appeal to the appropriate specialty code chief at the State level. Persons aggrieved by the decision of either of these two appeal processes could still appeal to the appropriate advisory board as allowed by ORS 455.690.

The size of the Building Appeals Board makes it difficult to convene meetings and gain group consensus. The reduction in the number of members will greatly enhance the ability to meet and discuss any appeal.

OTHER ALTERNATIVES CONSIDERED

Eliminate the local Appeals Board and rely on the State of Oregon Building Codes Division's specialty code chiefs to make a final determination regarding a decision of the City of Tigard Building Official.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Attachment #1 - Ordinance amending Chapter 2.09 of the Tigard Municipal Code
"Exhibit A" - Amended Chapter 2.09 of the TMC

FISCAL NOTES

N/A

CITY OF TIGARD, OREGON

ORDINANCE NO. 01-

AN ORDINANCE AMENDING CHAPTER 2.09 OF THE TIGARD MUNICIPAL CODE CHANGING THE NUMBER OF MEMEBERS FROM FOURTEEN TO SEVEN.

WHEREAS, THE PREVIOUS BUILDING APPEALS BOARD CONSISTED OF FOURTEEN (14) MEMBERS; AND,

WHEREAS, THE NUMBER OF MEMBERS MADE IT A CUMBERSOME BOARD FOR MEETINGS; AND,

WHEREAS, THE TERMS OF THE ORIGINAL BUILDING APPEALS BOARD MEMBERS HAVE SINCE EXPIRED; AND,

WHEREAS, THE TIGARD CITY COUNCIL, AT ITS AUGUST 28, 2001 MEETING, DIRECTED STAFF TO RETURN WITH AN ORDINANCE AMENDING THE TMC, REDUCING THE NUMBER OF BUILDING APPEALS BOARD MEMBERS FROM FOURTEEN TO SEVEN,

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: AMEND SECTIONS 2.09.020 and 2.09.030 AS SHOWN ON "EXHIBIT A."

SECTION : This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2001.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2001.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

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~~Strikeouts~~ are deleted language and **bold underline** is new language.

Chapter 2.09 BUILDING APPEALS BOARD

Sections:

- 2.09.010 Purpose.**
- 2.09.020 Appointment--Membership.**
- 2.09.030 Qualifications.**
- 2.09.040 Board removal.**
- 2.09.050 Vacancy.**
- 2.09.060 Election of officers.**
- 2.09.070 Meetings--Quorum--Voting.**
- 2.09.080 Board member conflict of interest.**
- 2.09.090 Disclosure of prehearing contact.**
- 2.09.100 Powers and duties of board.**
- 2.09.110 Rules and procedures.**

2.09.010 Purpose.

The purpose of the Tigard building appeals board is to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application of Title 14, except Chapter 14.16, of the Tigard Municipal Code. (Ord. 99-06)

2.09.020 Appointment--Membership.

The board shall consist of ~~fourteen~~ **seven** members who are not council members, officers or employees of the city. The members of the board shall be appointed by the mayor, subject to confirmation by the council, for a term of four years, and shall serve at the pleasure of the mayor and council. The Building Official shall be an ex-officio member and shall act as secretary to the board but shall have no vote on any matter before the board.

2.09.030 Qualifications.

The membership shall include:

A. one individual representing the general public;

B. one individual representing the Oregon Disabilities Commission;

C. the Fire Marshal or designee of the Tualatin Valley Fire and Rescue District;

D. one licensed general contractor actively engaged in the building business;

~~E. one architect, registered under state law;~~

~~F. E~~ one professional engineer, registered under state law and competent in matters of structural engineering;

~~G. F.~~ one building official in the active employment of an Oregon municipality;

~~H. G.~~ one attorney actively engaged in the practice of law in the State of Oregon; and

~~I. up to six additional members qualified by their construction trade experience and training.~~

2.09.040 Board removal.

A board member may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

2.09.050 Vacancy.

Any vacancy in the board shall be filled by the appointing authority for the unexpired portion of the term of the predecessor in the office.

2.09.060 Election of officers.

TIGARD MUNICIPAL CODE

The board, at its first meeting in each fiscal year, shall elect a chairperson and vice-chairperson, who shall serve at the pleasure of the board. The chairperson and vice-chairperson shall be voting members of the board. The vice-chairperson shall preside in the absence of the chairperson.

2.09.070 Meetings--Quorum--Voting.

The board shall meet as necessary. Four members constitute a quorum. All decisions of the board shall be by a majority vote of those members present and voting. Any item shall be deemed not to pass when there is lack of majority vote.

2.09.080 Board member conflict of interest.

A member of the board shall not participate in any board proceeding or action in which that member has a personal or pecuniary interest. Any actual or potential interest shall be disclosed at the meeting of the board where the action is being taken.

2.09.090 Disclosure of prehearing contact.

A member of the board shall disclose to the board, prior to any proceeding of the board, any prehearing or ex parte contacts with the applicant, or applicant's officers, agents, or employees. A member of the board shall disqualify himself or herself or be disqualified by the remaining members of the board, when it appears that the impartiality or objectivity of any member has been compromised by prehearing or ex parte contact.

2.09.100 Powers and duties of board.

A. The board shall have the authority to hear and decide appeals of orders, decisions or

determinations made by the Building Official relative to the application of Title 14, except Chapter 14.16, of the Tigard Municipal Code and any other authority granted in statute, law, or rule. The board shall have no authority relative to interpretation of the administrative provisions of Title 14 of the Tigard Municipal Code nor shall the board be empowered to waive requirements of Title 14 of the Tigard Municipal Code.

B. In granting any appeal, wherein the requirements of Title 14 of the Tigard Municipal Code are modified, the board shall first find that a special individual reason makes compliance with the strict letter of Title 14 of the Tigard Municipal Code impractical and that the modification is in conformance with the intent and purpose of Title 14 of the Tigard Municipal Code and that such modification does not lessen any fire-protection requirements or any degree of structural integrity.

C. In granting any appeal wherein an alternate material or method of construction not specifically prescribed by Title 14 of the Tigard Municipal Code is approved, the board shall first find that the proposed design, material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed by Title 14 of the Tigard Municipal Code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation. The board shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding such alternates.

D. The details of any board action, with accompanying findings, shall be entered into the record for the property in question. (Ord. 99-06)

2.09.110 Rules and procedures.

The board shall establish such rules and regulations for its governance and procedure consistent with the laws of the state and the ordinances of the city.■